

The Right to Vote—Effectively: Why Was “The Right to Vote” Omitted From the U.S. Constitution?

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With their government under the control of corporations and special interests, the People of the United States may think they have the right to vote, but, unfortunately, they do not. When the Constitution and the Bill of Rights were written, the authors intentionally omitted this very significant detail. They failed to include the right to vote, and the error has never been corrected.

Most Americans are unaware that they, unlike the citizens of most other democracies, do not have a basic constitutional right to vote. The constitutions of Germany and Japan adopted after World War II include a specific right to vote. Even in nations, such as Afghanistan, Iraq, and Syria—where Americans are fighting to impose democratic governments—the people already have a constitutional right to vote. Of 120 constitutional democracies in the world, only 11, including the United States, fail to explicitly guarantee a right to vote in their constitutions.

This critical omission from the Constitution was acknowledged by the U.S. Supreme Court in 2000, when a majority stated in *Bush v. Gore*: “The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College.”

As the result of a series of amendments, people of color, women, and young people over the age of 18 cannot be deprived of the right to vote because of their status; however, nowhere in the Constitution does it say they have a fundamental right to vote in the first place.

Why the Right to Vote Was Omitted From the Constitution. Fearing an “excess of democracy,” a majority of those who gathered at the Constitutional Convention decided to replace the Articles of Confederacy with a central representative government that preserved the power of the economic and social elite and left voting matters up to the states.

James Madison, the principal author of the Constitution and the subsequent Bill of Rights, publically stated the electors of the new government would be “the great body of the people of the United States.” In private, however, he worried that, “In future times, a great majority of the people will not only be without landed, but any other sort of, property. These will either combine under the influence of their common situation; in which case, the rights of property and the public liberty will not be secure in their hands; . . .” John Adams was even more direct. In opposition to allowing electors other than property owners, he said “There will be no end of it. New claims will arise. Women will demand a vote. Lads from 12 to 21 will think their rights not enough attended to, and every man, who has not a farthing, will

demand an equal vote. . . .”

The new constitution provided that members of the House of Representatives “shall be chosen every second Year by the People of the several States” and goes on to provide that the “Electors” shall have the same “Qualifications” as that for the “most numerous Branch of the State Legislature.” In other words, each state determines who can vote for state and congressional representatives.

Composition of the Senate was even more closely controlled, in that Senators shall be “chosen by the Legislature thereof. . . .” Finally, the Constitution held that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; . . .”

In electing the president and vice president, the Constitution imposed an even greater barrier between the “People” and the election of their principal representatives. The Constitution provides that “Each State shall appoint” presidential Electors “in such Manner as the Legislature thereof may direct. Thus, it is these “Electors” who actually vote in the “Electoral College” for the president and vice president. The result has differed from the popular vote four times in history, the last being in 2000.

Participation by the People in presidential elections—even today—is almost entirely at the discretion of the legislature in each state. States have enacted legislation allowing for primary and general presidential elections, but it is still the Electors who actually elect the president. The state legislatures still have the power to directly appoint presidential Electors without elections, and there is nothing in the Constitution to prevent it.

The Constitution and the Bill of Rights may not have included a specific right to vote; however, over the subsequent two centuries, the voting power of the People steadily increased and the United States republic gradually become more democratic.

Expanding the Suffrage. Initially, all states required voters to own property; however, Vermont began to allow all men to vote, and for a time, Tennessee provided universal male voting, including free blacks. Only New Jersey allowed the possibility of female suffrage; however, it was later revoked. Pennsylvania, New Hampshire, Delaware, Georgia, and North Carolina soon expanded the franchise to all taxpayers, but in 1800, the New Hampshire and Massachusetts legislatures suspended elections and directly appointed their presidential electors.

With westward expansion, voting was extended to include non-property owners. By the presidential election in 1828, there were 24 states, and they had all adopted free white male suffrage. The new Democratic Party represented the farmers and artisans against the business and financial interests. The Democratic candidate, Andrew Jackson—who believed even the poorest white male should be allowed to vote—ran against President John Quincy Adams. Three times as many white men voted in the election as did four years earlier, and most voted for Jackson.

Following the Civil War—and to ensure the vote of freedmen in the South for the Republican Party—the Fifteenth Amendment was enacted. It held 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.” The corresponding Fourteenth Amendment imposed penalties on states whenever “the right to vote at any election” was

“denied to any of the male inhabitants of such State. . . .”

The new constitutional guarantees of a freedman’s right to vote, did not, however, improve the fundamental voting rights of all citizens. The states may not have been allowed to overtly discriminate on the basis of race; however, they could impose other restrictions on voting—which had the same effect. Democrats quickly regained political dominance in the southern states and passed “Jim Crow” laws effectively depriving African Americans of their right to vote or to hold office. These laws included discriminatory literacy tests, the imposition of poll taxes, and a “whites only” primary system.

Constitutional amendments calling for the popular election of U.S. senators were introduced, but it was not until 1913 when the Seventeenth Amendment allowed most men, and a few women, to directly vote for their senators.

Commencing in 1848, women activists began to agitate for their right to vote. Following the Civil War and ratification of the Fourteenth and Fifteenth Amendments, women were able to point to the failure of the Constitution to protect the voting rights of half of the people in the United States.

Women’s suffrage was first introduced in 1878, but the Nineteenth Amendment was not ratified until 1919. Profound in its simplicity, it says: “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 sex.” The Amendment implies that “citizens” have the right to vote. In reality, it only provided women the same voting rights as men, which continued to be denied or abridged by the states.

Beginning around the turn of the century, the states began to legislate in favor of replacing political party caucuses with the popular nomination of candidates in primary elections. By the first world war, the majority of states had direct primaries, and most included all state offices on the primary ballots. More and more states began to include the nomination of congressional representatives, senators, and presidential candidates in primary elections.

With the Twenty-fourth Amendment in 1964, which eliminated poll taxes, and the Twenty-sixth in 1971, which extended the right to vote to citizens over the age of 18, the Constitution took its present form in regards to voting. Its interpretation by the Supreme Court, however, regarding the acts of Congress and state legislatures in voting matters, continues to both define and restrict the right to vote.

Right or Privilege. One would think that in a democratic republic, the right to vote is elemental—paramount—beyond question. It should be; however, the reality is that because voting in the United States is left up to the states, it is more of a privilege than a right. The difference lies in the ease by which voting can be restricted. Absent an explicit constitutional right, the vote can be giveth or taketh away by state legislatures, Congress, and the state and federal courts.

The Voting Rights Act of 1965 empowered the federal government to enforce voting rights in all of the states, but particularly in the South—which had experienced a century of racial and social disenfranchisement. In those states with the most overt racial discrimination, the Act required the preapproval of any legislative changes that affected voting. The effect was immediate: African Americans, Asian Americans, and Hispanics, in ever growing numbers, were allowed to register to vote, to participate in elections, and to be elected to public

office.

Most of the newly enfranchised minority voters registered with the Democratic Party—which became more liberal. At the same time, white voters began to switch to the Republican Party—which became more conservative. Today, generally, the larger Democratic Party supports increased registration and voting, while the smaller Republican Party seeks to impose restrictions on both.

Approximately one quarter of all qualified voters are not registered, and many state laws and administrative practices are aimed at blocking—rather than encouraging—their enrollment. These include the imposition of arbitrarily short deadlines for the submission of voter registration forms and imposing harsh penalties for administrative errors. Other schemes to suppress voting involve the unnecessary purging of registration rolls to remove qualified people; the deliberate misallocation of election resources resulting in long lines in low-income and college precincts; misleading voters regarding procedures and locations for voting; and “caging,” which involves sending certified letters to voters and striking registrations for those whose letters are returned as undeliverable.

There are millions of otherwise eligible voters in the United States who do not possess photographic identification. If the reason is a lack of money to pay the licensing fee, voter ID laws have the same effect as the Jim Crow poll tax did in the South. The laws disproportionately affect the young, disabled, seniors, minorities, and the poor and disadvantaged of every race. The reality is that voter fraud is very rare, and when it does occur, it would not be prevented by voter ID laws.

The partisan bias of suppression laws is indicated by the fact that more than half of all state photo ID legislation resulted from the efforts of the conservative, corporate-sponsored, American Legislative Exchange Council (ALEC). Sixty-two bills based on ALEC’s model Voter ID Act have been introduced in state legislatures. Of the 22 states in which new voting restrictions have been passed, 18 have Republican-controlled legislatures.

In 2008, a conservative majority of the U.S. Supreme Court approved an Indiana voter ID law—even though it had a partisan basis—because it was not “excessively burdensome” to most voters. The decision followed an earlier one in 2000 in which the Court affirmed that the Constitution “does not protect the right of all citizens to vote, but rather the right of all qualified citizens to vote.”

Another opinion by the Supreme Court immediately prior to the 2014 midterm elections reversed a Federal District Court in Texas, which had ruled the state’s voter ID law unconstitutionally prevented more than 600,000 registered Texans from voting. The lower court found the law was adopted “with an unconstitutional discriminatory purpose” and it placed “an unconstitutional burden on the right to vote.” The conservative majority of the Supreme Court disagreed—directly cutting off the access of more than a half million Texans to the polls and challenging the votes of millions of other Americans subject to similar laws in other states.

Previously, the Texas voter ID law had been blocked by the Voting Rights Act, which required jurisdictions with a history of racial discrimination to obtain permission before changing voting procedures. That provision of the Act was earlier struck down by the Supreme Court in 2013, and Texas officials announced they would begin enforcing the state’s new voter ID law.

In her dissent to the 2014 decision, Justice Ruth Bader Ginsburg said, “A sharply disproportionate percentage of those voters are African American or Hispanic.” She added that “racial discrimination in elections in Texas is no mere historical artifact.”

De facto Disenfranchisement. The addition of a specific right to vote in the Constitution would help control the legislative and judicial assault on voting because restrictions would receive “strict scrutiny” to ensure they actually address compelling state interests. In effect, a basic constitutional right to vote would create a presumption against restrictions, such as voter ID laws; however, other factors, such as unrestrained campaign financing, gerrymandering, lobbying, conflicts of interest, and corporate personhood also diminish the quality and value of an individual’s vote.

The combination of these destructive political practices has resulted in an even more insidious disenfranchisement of American voters. Since both major political parties have come under the domination of a powerful oligarchy composed of corporations, special interests, and the financial elite, the candidates of both parties fail to offer effective solutions to the critical environmental, economic, personal liberty, and militarization problems that threaten the People of the United States.

The consequence is starkly apparent in the abominable 2016 election which features two of the most unpopular major presidential candidates in history. Declining to vote—or being forced to vote for the least threatening of two dangerous candidates—contributes nothing to successful governance and further erodes what little confidence Americans have remaining in their government.

Secretly handing out campaign contributions and paying outright bribes through lobbyists, the oligarchy effectively manipulates political processes beyond the presidency throughout Congress, the federal bureaucracy, state and local governments, and the courts. The net result is that—irrespective of who is elected—the People’s representatives refuse to take action on any issue that threatens the wealth or power of their true masters. A Rasmussen survey in February 2016 illustrates this abdication of governance. Sixty percent of likely U.S. voters believe that Congress is doing a poor job, and 61 percent believe it is likely that most members of Congress have sold their vote for either cash or a campaign contribution.

The failure of their representatives to offer solutions, or to act on their behalf, is yet another way in which the vote of the People has been devalued. As long as other anti-democratic practices are allowed to continue, the power of the People to control their government through voting will be corrupted, even if the right is enshrined in the Constitution. If, however, voters were also empowered to make their own policy, control the electoral process, and cast effective votes, Madison’s “great body of the people of the United States” could finally become the Electors (and masters) of their own government.

The Right to Cast Effective Votes. Voting in a free society has to be more than a privilege, which can be granted or taken away at the whim of government. By definition, voting is an integral part of a republican form of government, and, if a government is to be free and democratic, *voting not only has to be a right, but it has to be effective* as well.

Tying together the provisions that follow it, Section One of the U.S. Voters’ Rights Amendment (USVRA) simply provides that all citizens have the right to vote. Moreover, by specifying an *effective* vote, it incorporates the subsequent sections within its intent and purpose.

The right of all citizens of the United States, who are eighteen years of age or older, to cast effective votes in political elections is inherent under this Constitution and shall not be denied or abridged by the United States or by any State.

The USVRA not only guarantees the individual right to vote, but it includes other remedies to ensure that the votes cast by the People are effective in defining what they want their government to do and how they want it done. These include defining equal rights for women; maximizing voter participation and prohibiting the suppression of voting; eliminating corporate personhood; controlling campaign contributions; guaranteeing freedom of the press; public funding of elections; prohibiting gerrymandering; increasing congressional representation; improving civic education and public information; articulating policy issues; deciding policy issues by voting; eliminating the Electoral College; curtailing lobbying; and prohibiting conflicts of interest.

The purpose of the USVRA is *not* to change the personal political beliefs of anyone. Rather, its mission is to provide individuals of every political persuasion with the power to effectively focus and communicate their thinking, and to persuade others of the validity of their convictions.

Transformation. Not one of the founders of the United States believed the Constitution was perfect, and all believed it could and should be amended as necessary. The failure of the Constitution to guarantee the right to vote and its abdication of voting rights to the states has resulted in the destructive political practices that currently undermine the liberty of the People and the effectiveness of their republic.

The United States government is no longer representative of those who elect it, nor is it the government the American People consented to. If the Republic is to continue, its constitution must be amended to empower the People, whose consent is essential to its legitimacy.

The USVRA is a voters' bill of rights—in that it remedies the destructive practices that have eroded the tenuous voting rights granted to the People by Congress and allowed by the states. It is, however, far more than a set of constitutional amendments that would curtail these anti-democratic practices. Its ratification—and *the movement that forces it to happen*—would create a dramatic transformation of the United States government into finally becoming a true representative democracy.

Under the USVRA, the government will be reoriented to the People and their society; it will nurture—rather than endanger the People; and it will provide the means to make the government work for their benefit.

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