

PRESIDENT'S MESSAGE

The Right to Vote ... Our Most Important Right

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As we all may not know, there is no explicit constitutional right to vote. For such an important right to protect the republic and ensure democracy, you would have thought the founders would have expressly written such a right into one of the clauses of the constitution. But if you examine it, you will find there is no constitutional right to vote.

The constitutional law professors we all had in law school and other legal scholars have debated the notion of whether the right to vote is embedded into the Equal Protection Clause of the 14th Amendment. The framers of this amendment designed it to threaten the loss of congressional representation if a state were to deny the right to vote to any of its (male) U.S. citizens over the age of 21, unless he participated in a crime. After the 14th Amendment was ratified in 1868, the 15th Amendment was adopted in 1870 to prohibit states from denying the right to vote based upon race, color or previous servitude. The 19th Amendment, which was passed in 1920, allowed women the right to vote; the 24th Amendment, which was passed in 1964, eliminated the failure to pay a poll tax as a reason to deny the right to vote; and the 26th Amendment, which was passed in 1971, allowed 18-year-olds the right to vote.

For nearly 150 years, the U.S. Supreme Court has not hesitated to affirm the notion of the right to vote. In the decision in *Dunn v. Blumstein*,

405 U.S. 330 (1972), Justice Thurgood Marshall stated, “In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” Two years later in *Richardson v. Ramirez*, 418 U.S. 24 (1974), Justice William Rehnquist wrote: “Because the right to vote ‘is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government,’ ... voting is a ‘fundamental’ right.”

Some of the cases the court was referring to go back as far as 1876. The first voting rights case under the 15th Amendment was *United States v. Reese*, 92 U.S. (1876). In this case, a Kentucky electoral official had refused to register an African American person’s vote. The court held that the constitution prohibited exclusion from voting on racial grounds. Unfortunately, this decision still did not open up voting to people of color. Soon after this ruling, some states began to adopt devices such as poll taxes, literacy tests and grandfather clauses that were all designed to disenfranchise most black votes across the south, and by 1910, all the former Confederate states passed new constitutions or amendments to achieve this goal to disenfranchise.

Under Article II, Section 4 of the U.S. Constitution, one finds that states are accountable for managing federal elections. Most states explicitly assert the right to vote for each of its citizens in its state constitution, although this is not a right that states are required to grant. Section 2 of the 14th Amendment “penalizes states that

withhold the ballot but does not require them to grant it.” Thus, if a state grants the right to vote for citizens of its state, then the state will be punished if they prevent a state citizen from voting using specific criteria.

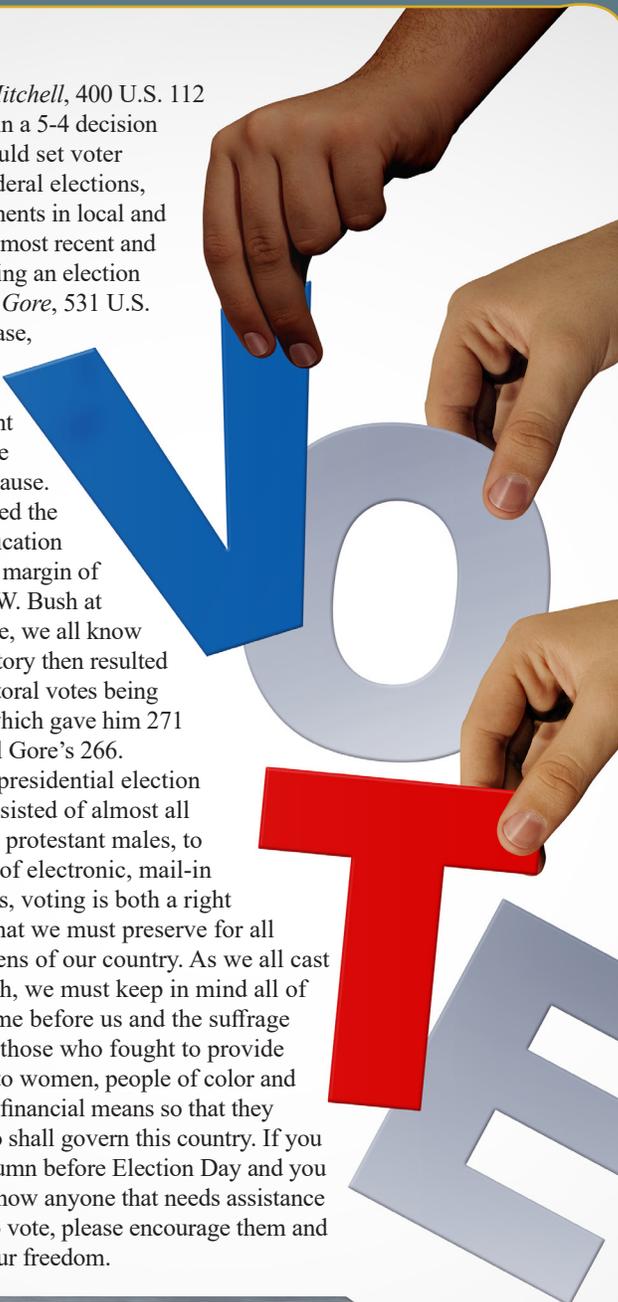
In *Reynolds v. Sims*, 377 U.S. 533 (1964), the court ruled that state legislative chambers must be roughly equal in population. This

application of “one person, one vote” was applied to legislative bodies that included Nevada’s Senate, which at the time had a senate district representing 568 people while the largest represented 127,000. This decision led many states across the country to change their existing system of representation to one that was far more democratic and representative.

The Voting Rights Act of 1965 arose out of the Civil Rights era to enforce the prohibition of states to deny the right to vote based on race, color and the ability to read English. Furthermore, this act issued a “preclearance” provision to prevent historically racist states from changing voting laws to limit a minority vote. Seeing as Congress has ratified multiple constitutional amendments and passed the aforementioned acts (over the span of approximately 100 years), it may seem that they have taken many precautions to prevent states from denying the right to vote to citizens. However, much has changed since the decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). Section 5 of the Voting Rights Act of 1965 was originally designed to prevent historically discriminatory states from making changes to their voting laws and procedures without first seeking approval or “preclearance” from either the Department of Justice or a federal court. According to the Brennan Center for Justice, the *Shelby County* decision eviscerated that portion of the law, giving states with a history of discrimination free rein to change their voting laws without prior approval.

In *Oregon v. Mitchell*, 400 U.S. 112 (1970), the court – in a 5-4 decision – held Congress could set voter qualifications in federal elections, but not set requirements in local and state elections. The most recent and famous case involving an election is of course *Bush v. Gore*, 531 U.S. 98 (2000). In that case, the court ruled that the use of different standards in different counties violated the Equal Protection Clause. This decision allowed the previous vote certification to stand, setting the margin of victory for George W. Bush at 327 votes. Of course, we all know that this narrow victory then resulted in Florida’s 25 electoral votes being awarded to Bush, which gave him 271 electoral votes to Al Gore’s 266.

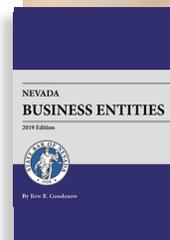
From the first presidential election of 1789, which consisted of almost all landowning, white, protestant males, to our current system of electronic, mail-in and absentee ballots, voting is both a right and an obligation that we must preserve for all those who are citizens of our country. As we all cast our votes this month, we must keep in mind all of those who have come before us and the suffrage that was earned by those who fought to provide this precious right to women, people of color and people without any financial means so that they have a voice in who shall govern this country. If you are reading this column before Election Day and you have not voted or know anyone that needs assistance to get to the polls to vote, please encourage them and help them protect our freedom.



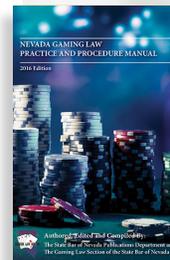
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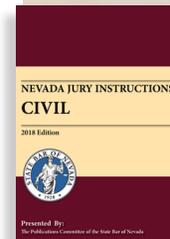
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