

Examine the US Constitution as a whole and explain why you think it does or does not fully protect the Right to Vote.

When Representative James Otis publicly argued “taxation without representation is tyranny,” he set the stage for the ensuing Revolutionary War and the founding of America.¹ In fact, the basic tenet of this new free nation relied on representation through elections. Holding elections meant establishing the right to vote. Yet James Madison, the leading author of the Constitution, believed that only “freeholders of the country” should be allowed to vote.² These educated, mortgage-free land owners could make the best choices for the country. And since states already had such laws in place, the explicit granting of voting rights to individuals did not appear in the 1787 Constitution. Instead, this founding document only allowed eligible citizens from a given state to vote for its members of the House of Representatives.³ The power to authorize voting thus lied with the states, with each having its own regulations.

Given this variation in rules and a number of barriers to voting, the federal government added amendments to protect those affected. These extensions of voting rights occurred in a somewhat piecemeal fashion, mostly after the Civil War.⁴ The 14th Amendment made citizens of all natural born or naturalized Americans. With this expansion of citizenship, came voting rights which could not be restricted by the states. The 15th Amendment prohibited the restriction of voting based on race while the 19th Amendment extended the right to vote to all women. Then came the 24th Amendment that protected low-income citizens by banning poll taxes. And the 26th Amendment gave the right to vote to anyone 18 years of age and older. Although these additional measures sought to strengthen voting protection, they lacked the much-needed enforcement of these new laws.

The inadequate protection of voter rights by our Constitution becomes clear when we consider the necessity of subsequent federal legislation. With the passage of the Enforcement Act of 1870, President Ulysses S. Grant could enforce the 15th Amendment.⁵ This law permitted him to use federal marshals to bring charges against those who discriminated against Black voters. Almost a century later, the same concerns led to the passage of the Voting Rights Act of 1965. This landmark legislation provided the federal government with more tools to enforce the 14th and 15th Amendments.⁶ Per its Section 5, any changes to an eligible district's elections laws or procedures must be officially approved by the Attorney General or a three-judge panel in a Washington D.C. district court. These eligible districts were defined by Section 4(b), known as the "coverage formula," to target jurisdictions known to be discriminatory. Over the years, these oversight restrictions have helped to deter any racially motivated suppression of voting rights.

Yet almost 50 years later, the Voting Rights Act came under attack. In *Shelby County v. Holder* (2013), the U.S. Supreme Court deemed the coverage formula as unconstitutional and not applicable to more contemporary conditions.⁷ While Section 5 remained intact, a voided Section 4(b) meant an unenforceable Section 5. This ruling thus led to an increased rate of voter registration purges. The attack on voting rights continued with Arizona's *Brnovich v. Democratic National Committee* (2021) when the latter challenged the existing precinct-based policy as violating Section 2 of the Voting Rights Act, which prohibited a state from using race or color to abridge the right to vote.⁸ Arizona's system only counted casted votes from their assigned precincts; all "out of precinct" votes got discarded. The Supreme Court sided with Arizona's law, interpreting Section 2's "totality of circumstances" as permitting voting rules with disparate impact on citizens.⁹ The Court ruled that since ensuring even distribution of voters among polling places did not impose a burden on voters, Arizona preserved an equal openness of voting.

Both of the above cases have severely weakened the Voting Rights Act, making it more difficult for our government to block discriminatory voting practices. With these victories, other states like Alabama have decided to challenge voting protection laws.¹⁰ Realizing the possibility of the dismantling of this voting rights, enforcement arm of our Constitution, Congressional Democrats have tried to pass the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act.^{11,12} However, Republicans have successfully opposed these proposals. Thus, as it stands, a wounded Voting Rights Act means a vulnerable Constitution. If this trend continues, even the Constitution's own words will not hold enough weight to rescue itself. And with a Supreme Court conservative majority, our Justices will continue to hold up a perfectly imperfect Constitution that Madison envisioned.

Endnotes

1. NCC Staff, "On this day: 'No taxation without representation!'" National Constitution Center, October 7, 2022, <https://constitutioncenter.org/blog/no-taxation-without-representation>, accessed October 9, 2022.
2. Morgan Marietta, "The right to vote is not in the Constitution," The Conversation, August 26, 2020, <https://theconversation.com/the-right-to-vote-is-not-in-the-constitution-144531>, accessed October 7, 2022.
3. "The Constitution of the United States: A Transcription," National Archives, August 16, 2022, <https://www.archives.gov/founding-docs/constitution-transcript>, accessed October 9, 2022.
4. "Constitution of the United States," Congress.gov, <https://constitution.congress.gov/constitution/>, accessed October 10, 2022.
5. United States Congress, "The Enforcement Acts," Teaching American History, April 20, 1871, <https://teachingamericanhistory.org/document/the-enforcement-acts/>, accessed October 10, 2022.
6. Kevin J. Coleman, The Voting Rights Act of 1965: Background and Overview, CRS Report, Congressional Research Service, July 20, 2015, <https://sgp.fas.org/crs/misc/R43626.pdf>, accessed October 8, 2022.
7. "*Shelby County v. Holder*," Oyez, <https://www.oyez.org/cases/2012/12-96>, accessed October 10, 2022.
8. "*Brnovich v. Democratic National Committee*," Oyez, <https://www.oyez.org/cases/2020/19-1257>, accessed October 10, 2022.
9. "*Brnovich v. Democratic National Committee*."
10. Nina Totenberg, "The landmark Voting Rights Act faces further dismantling at the Supreme Court," npr, October 4, 2022, <https://www.npr.org/2022/10/04/1126619000/voting-rights-act-supreme-court>, accessed October 8, 2022.
11. "H.R.4 - 117th Congress (2021-2022): John R. Lewis Voting Rights Advancement Act of 2021," Congress.gov, September 14, 2021, <http://www.congress.gov/>, accessed October 9, 2022.
12. "S.2747 - 117th Congress (2021-2022): Freedom to Vote Act," Congress.gov, October 20, 2021, <http://www.congress.gov/>, accessed October 9, 2022.

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- National Archives. "The Constitution of the United States: A Transcription." National Archives. August 16, 2022. <https://www.archives.gov/founding-docs/constitution-transcript>. Accessed October 9, 2022.
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- Totenberg, Nina. "The landmark Voting Rights Act faces further dismantling at the Supreme Court." npr. October 4, 2022. <https://www.npr.org/2022/10/04/1126619000/voting-rights-act-supreme-court>. Accessed October 8, 2022.
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