



VOTING RIGHTS

Does our state adequately balance the need for lawful access to the ballot and election security?

Voting is a fundamental aspect of any representative democracy. Voting is how citizens tell government officials what their priorities and desires are, hold public officials accountable, and ensure justice for all. As James Madison wrote in the Federalist Papers #52, voting ensures a direct connection between the people and the government: “As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration [Congress] should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.”

However, from the earliest days of the Republic, voting and elections, whether at the federal or local levels, can easily end in controversy and dispute. Vice President Kamala Harris noted recently in March 2022: “We again, however, find ourselves caught in between. Between injustice and justice. Between disappointment and determination. Still in a fight to form a more perfect union. And nowhere is that more clear than when it comes to the ongoing fight to secure the freedom to vote.”



SAMPLE PROMPTS FOR CIVIL CONVERSATIONS

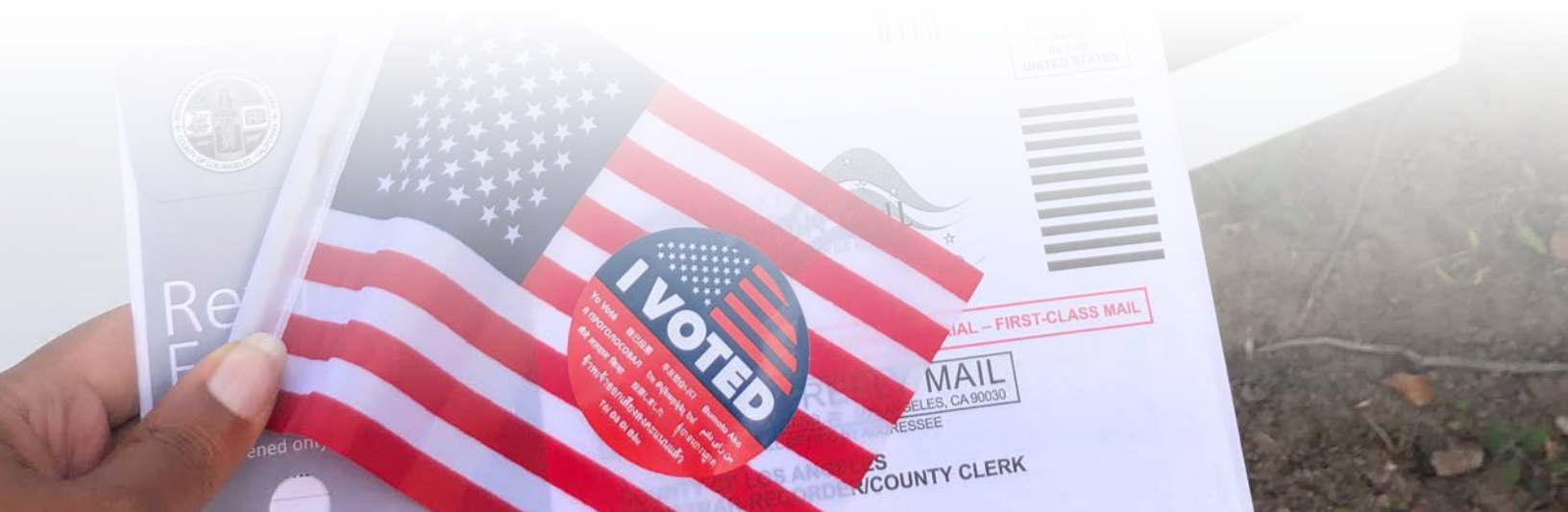
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EXPANDING SUFFRAGE AND THE CONSTITUTION

Much of the history of voting in the United States has been the steady expansion of voting rights to more groups of people. The Revolutionary War brought the birth of the United States of America and the right to vote. The Civil War led to the recognition of African Americans as citizens, and the formal right to vote (for African-American men) with the passage of the Fifteenth Amendment. Then, following the First World War, the women's suffrage movement finally succeeded in extending the right to vote to women with passage of the Nineteenth Amendment. Eventually, in the waning days of the Vietnam War, the Twenty-Sixth Amendment lowered the voting age to 18.

Notably, a number of states—especially in the Jim Crow South—refused to accept the purpose of the Fifteenth Amendment, and sharply restricted access to the ballot for African Americans for a century. It was not until the passage of the Voting Rights Act of 1965 put the power of the federal government on the side of voters that African-Americans achieved relatively secure access to the ballot box. The Voting Rights Act created a foundation and procedure, almost like a floor without a ceiling, for voting rights that would rectify the nation's long history of racial discrimination in voting. It also provided a vehicle for enforcement of the right of eligible citizens to participate in the electoral process. In recent years, however, some states have sought to roll back the protections of the Voting Rights Act—and they have won recent Supreme Court cases to that end.

On June 25, 2013, the Supreme Court ruled in *Shelby County v. Holder*, a case that sought to have two sections of the Voting Rights Act declared unconstitutional. These two sections were Section 4b, which mandated the formula to identify jurisdictions subject to regulation; and Section 5, which mandated “preclearance” of election procedures of covered jurisdictions. The Court invalidated Section 4b, ruling that it was unconstitutional and accepting the argument that the coverage formula was based on 40-year-old data and thus dated. The Court did not rule on Section 5, so in theory pre-clearance still exists. Realistically, however, with the demise of Section 4b in *Shelby*, the federal government has no ability to define which jurisdictions should be covered by Section 5; and if no jurisdictions are subject to Section 5, then the Voting Rights Act has been rendered toothless. Theoretically, Congress could develop a legislative remedy by creating a new coverage formula: but, given the current state of partisan divide in Congress, especially related to voting rights, such action seems unlikely.





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ACCESS TO THE POLLS

One interesting aspect of elections in the United States is that they are administered at the state and local levels, as outlined in the U.S. Constitution. Thus, the current state of voting rights can be best seen through a comparison of legislation and trends in the various states. There are many issues to consider, but the examples below may inform a discussion about recent U.S. Supreme Court decisions, policy debates, and very real ideological differences, and how these matters impact the right to cast a vote.

VOTER IDENTIFICATION LAWS — Voter identification is a question of significant controversy. Going back to 2002, the Help America Vote Act, comprehensive national election reform legislation enacted after the contested 2000 election and the Supreme Court decision in *Bush v. Gore*, mandated that first-time voters who register by mail must show identification, either photo or paper, in order to vote for the first time. The issue sparked litigation that resulted in the 2008 Supreme Court case, *Crawford v. Marion County Election Board*. The Court ruled that an Indiana law requiring identification to vote did not violate the Constitution.

Crawford may have settled the legality of the Indiana law, but it did not quell the national debate over voter identification, which exemplifies the political struggle over this area of state policy. Some people believe that voter identification is necessary to ensure that the correct individual is voting, and thus identification serves as a defense against voter fraud. Others believe that voter fraud is practically nonexistent and is simply another excuse to attempt to disenfranchise certain parts of the population. For some, the prospect of presenting voter identification at the polls is easy: just open your wallet and show your driver's license and you're done—identity confirmed. But, for others—such as the elderly, minorities, the homeless, and others in poverty—presenting a government ID is a hurdle that threatens their ability to vote.

FELON DISENFRANCHISEMENT — Felon disenfranchisement is the practice of prohibiting felons from voting, either permanently or for the period of incarceration or probation or parole. There is no standard view on this practice among states. The Supreme Court ruled it constitutional in 1974, with *Richardson v. Ramirez*. Currently two states, Vermont and Maine, allow felons to vote while incarcerated. Fourteen states and the District of Columbia prohibit felons from voting while incarcerated, but automatically reinstate voting rights upon release. Twenty-two states prohibit felons from voting while incarcerated and during parole or probation, and their rights are automatically reinstated following those proscribed periods, though fines and penalties may have to be paid. And finally, 12 states: Alabama, Arizona, Delaware, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Wisconsin, and Wyoming, are among the strictest in the nation with no automatic reinstatement of rights after completion of sentence and parole or probation; some even require a pardon from the governor. In 2016, it is estimated that more than 6 million otherwise eligible voters were unable to vote due to their status as felons or due to prior felony convictions. Studies have shown that this practice has disproportionately affected communities of color. Recent trends have moved toward automatic reinstatement or loosening barriers for reinstatement. For example, Florida voters approved a referendum in 2018 to reinstate voting rights to former felons—and then the Republican governor elected in 2018 moved swiftly to sign legislation to limit its impact.



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VOTER POLL PURGES — Purging the voter roll is the practice of removing registered voters from the official voter registration list due to inactivity, death, or relocation out of the jurisdiction. These situations can highlight the tensions in the administration of elections between the desire to have accurate voter rolls and the desire to avoid disenfranchising people by inappropriately removing them from the rolls. The problem is that once a voter has been removed from the rolls, they may not have an immediate remedy that will allow them to vote easily in the next scheduled election. The Supreme Court ruled on this matter in 2018, in *Husted v. A. Philip Randolph Institute*, when it determined that Ohio’s controversial practice of purging voters if they failed to vote in consecutive elections was constitutional. Statistics show that *Shelby* has had a direct effect on increasing the volume of voter purges. The Brennan Center estimates that 17 million voters were purged from the rolls between 2016 and 2018; and of those purged, the rate was 40% higher in jurisdictions that were previously covered by preclearance under the original Section 5 of the Voting Rights Act. A possible solution to inaccurate voter purges may lie with technology, but as is often the case, technology in the election administration arena is often constrained by the need to keep the process as secure as possible. The practical effect of such constraints is that often different state-wide databases lack the capability to share information nor is there a national voter registration database. In the meantime, states should focus on providing meaningful and adequate notice and hearing to those whose rights to vote will be removed by voter roll purging.

INDIVIDUALS MUST BE VIGILANT — The road to voting and electoral participation is, unfortunately, often a long and bumpy road, as seen from the need for so many constitutional amendments to create our basic framework to vote. The Voting Rights Act was created to ensure that the franchise of voting is open and accessible to as many eligible citizens as possible. Current events, politics, and society, of course, can influence trends in election law. Also, political ideology can lead to rigidity and intransigence, rendering consensus unreachable. All of these factors, from both good and bad actors, remind us that, as individuals, we must always be vigilant about protecting the right to vote.

This prompt was adapted in 2022 from Elizabeth Yang, “Ensuring Access to the Ballot Box,” *Insights on Law and Society*, Vol. 20, Issue 1, published by the American Bar Association, October 2021.



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SAMPLE QUESTIONS FOR DISCUSSION

1. What have been your experiences voting with regard to access and election security?
2. Which, if any, of these electoral reforms would increase access to the ballot and preserve election security? Which, if any, should be prioritized in your state?
 - Lowering the voting age to 16
 - Allowing minors to work as election judges at polls
 - Allowing for early voting
 - Requiring government IDs to vote
 - Offering voting by mail
3. What are some ways to improve voter turnout and engagement in your community?
4. Should voting in the United States be legally required? How would that affect voting and electoral representation in your community?
5. Should Election Day on the first Tuesday in November be a national holiday?
6. What can be done on the local level to improve voter confidence in the safety and security of the American electoral process?

