

Who Can Vote? How Do You Know?

Voting Rights: A Lesson to Accompany *Fault Lines in the Constitution - The Framers, Their Fights, and the Flaws That Affect Us Today*

Rationale:

The Framers specified that the people would elect representatives, but they included little else in the Constitution pertaining to who could vote and how voting would occur. Amendments addressed the former, declaring over time that voting rights could not be abridged due to race or gender and extending suffrage to citizens 18 or over. The Constitution, though, remains silent on the latter; the states have the power to determine voting procedures and limitations for their citizens. Since 1787, then, states have enacted different laws and regulations regarding voting and registration to do so, with varying results. According to Cynthia and Sanford Levinson, “States are all over the map when it comes to voting laws. Their policies determine how easy—or difficult—it is for citizens to vote.”¹

The following materials look at the evolution of voting rights over time, the ways in which different states enable or limit citizens’ voting rights, and the federal government’s role in supporting state decisions and/or pushing for change.

Essential Questions:

- How have voting rights evolved since the Constitution was ratified?
- Why is suffrage important to marginalized groups in the United States? Why, historically, is it the right for which so many groups fight?
- To what extent are voting rights guaranteed to eligible voters today?

Objectives: *Students will be able to...*

- Identify the constitutional articles and amendments that provide and expand voting rights in the United States.
- Describe the ways in which voting rights have expanded over time.
- Discuss obstacles and issues pertaining to voting in the twenty-first century.
- Analyze the ways in which elections might be affected by voter suppression and/or low voter turnout.
- Evaluate the status of voting rights for all citizens in the United States in the twenty first century.

¹ Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws that Affect Us Today*, 3rd Edition (Atlanta: Peachtree Publishing Company, Inc., 2025), 104.

Common Core Standards:

Middle School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.6-8.1

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-LITERACY.RH.6-8.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.6-8.7

Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.

CCSS.ELA-LITERACY.RH.6-8.8

Distinguish among fact, opinion, and reasoned judgment in a text.

High School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.3

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.11-12.7

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-LITERACY.RH.11-12.8

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-LITERACY.RH.11-12.9

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

D) Voting Rights in the United States: A History

The Framers did not address the subject of who had the right to vote. They assumed that there would be elections and voters, but who could vote and how was left up to the states, even if they concocted entirely different procedures.

Not surprisingly, every state did come up with its own rules.

In most states, only men could vote. New Jersey alone allowed women to do so, but only wealthy, unmarried women. That's because only people worth at least fifty pounds had the right to vote, and, when a woman married, her property went to her husband. In 1807, New Jersey women lost the right to vote as the result of a dispute between the major political parties.

Some states required that voters own property or pay taxes.

All states limited suffrage—the right to vote—to persons over the age of twenty-one, the age of adulthood.

No state allowed enslaved people to vote. But some allowed free Black people to do so, while others did not. Of course, legislators could change their minds. North Carolina took away the vote from free Black people in 1835, as Pennsylvania did three years later.

Some of the restrictions were barred following the Civil War. In 1870, the reunited nation adopted the Fifteenth Amendment. This prohibits states from making it hard or impossible for people to vote because of their race.

Officials, particularly in Southern states, then required that voters pass difficult literacy tests or pay poll taxes. Although they claimed these laws were not racist, many African Americans were still denied the right to vote, just as the white people had intended..

Thereafter:

The women's suffrage movement had split over whether or not to support the Fifteenth Amendment. If men of color could vote, why not women? Finally, fifty years later, in 1920, the Nineteenth Amendment allowed women to vote.

The Twenty Fourth Amendment, added in 1964, prevents states from charging "poll taxes" to vote in state elections for federal officials. Southern states, in particular, had used this tactic to make it harder for poor people to vote.

In 1971 the Twenty-Sixth Amendment changed the age of adulthood from twenty-one to eighteen.

More recently, voting rights activists have used the Fourteenth Amendment, which was adopted in 1868 and guarantees all citizens "equal protection" under the law, to try to prevent states from restricting the right to vote. In 1972, just over a century after the amendment was ratified, the Supreme Court ruled that states could not require new residents to wait a year before registering.

It might appear that constitutional amendments have increased voters' access to the polls, no matter where they live. That's not entirely true.²

² Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 101-104.

II) Voting Rights in the Constitution

Article I, Section 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Amendment XIV

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Amendment XV

Section 1. 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.

Amendment XIX

Section 1. 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.

Amendment XXIV

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Amendment XXVI

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Questions:

- *How have voting rights evolved over the course of time in the United States?*
- *What conclusions can you draw about the significance of voting as part of the United States' political culture based on these Amendments?*

III) Voting Rights Act (1965)

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes....

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State...

SEC. 5. Whenever a State or political subdivision... shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure....

SEC. 6. Whenever... the Attorney General... has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or that, in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate...

SEC. 10. ... Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

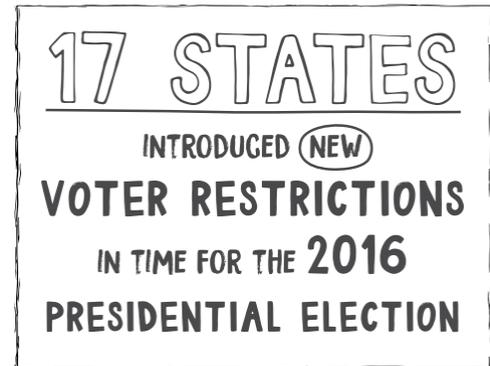
SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

Questions:

- *To what extent was the Voting Rights Act one of the Civil Rights Movement's most significant accomplishments?*
- *How did the Voting Rights Act attempt to eliminate entrenched obstacles to voting?*

IV) “*Fault Lines*”: Voting Rights and the States

Though the Constitution guarantees US citizens over the age of 18 the right to vote, habitual and legal obstacles to voting remain. Moreover, though the Constitution states WHO can vote, HOW they vote is left to the states. This affects the literal process—some states use paper ballots, others voting booths, etc.—as well as laws governing eligibility, resources, and, significantly, registration. Thus, as Cynthia and Sanford Levinson assert, “States are all over the map when it comes to voting laws. Their policies determine how easy—or difficult—it is for citizens to vote.”³ This creates several “fault lines” in our constitutionally granted voting rights.



*Residence:*⁴

- Some states refuse to count college students as residents or make it practically impossible for them to vote at school. Undergrads at Prairie View A&M University sued in 2018 when county officials told them to register using an address in the wrong precinct. The students lost their case.
- Twenty-two states require residence ranging from ten to thirty days before registering to vote. The other twenty-eight have no residence requirements.

*Registration:*⁵

- Twenty-four states, including California, Colorado, Georgia, and Nevada, plus the District of Columbia, allow automatic voter registration when people renew their driver’s licenses or get IDs at a motor vehicle office.
- Twenty-two states plus DC allow people to register when they show up at the polls on Election Day. North Carolina allows this for part of its early-voting period.
- Forty-two states and, yes, DC allow online registration. The other states require people to appear in advance at official sites, sometimes inconveniently located, with documentation to prove their identity and eligibility.
- Oklahoma requires a regular street address, making it difficult for citizens living on tribal lands and the unhoused to register.

*Eligibility:*⁶

- About four million people across the country have lost the right to vote because of their criminal records.
- Ten states forever disenfranchise individuals who commit certain crimes. The range of crimes varies from murder to merely writing a bad check, as in Mississippi.

³ **Quote:** Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 104. **Graphic:** Levinson and Levinson, 105.

⁴ Levinson and Levinson, 105.

⁵ Levinson and Levinson, 105-106.

⁶ **Text:** Levinson and Levinson, 106-107. **Graphic:** Levinson and Levinson, 107.

- Maine, Vermont, and DC, on the other hand, allow people convicted of felonies to vote even while they're serving their sentences.
- Michigan automatically registers everyone upon their release from prison. Twenty-three states, including Nebraska, prohibit these "returning citizens" from voting while jailed but automatically restore the right when they're released or finish their parole period or pay any fines. Fifteen states automatically restore voting rights to former felons a certain number of years after they're released; Wyoming does so only for those who have committed nonviolent crimes. Governors in some states, including Arizona and Iowa, can decide to restore rights on a case-by-case basis.
- Floridians passed a referendum in 2018 that restored voting rights to felons convicted of committing nonviolent crimes in the state, though the legislature limited their eligibility. People convicted of felonies in other states who reside in Florida can vote there as long as the state where they committed the crime would allow them to do so. Since New York allows felons to vote if they are not imprisoned, Donald J. Trump was allowed to vote for himself in the 2024 presidential election.



*Identification:*⁷

- Fourteen states and DC do not require identification during voter registration.
- Thirty six states require that voters produce some form of identification at the polls:
 - Of these, twenty-one say the ID must include a photograph, which can be costly.
 - Fifteen states accept nonphoto IDs, such as a hunting license, an electric bill, or a student identification card.
 - Some states allow voters who arrive without ID to fill in a provisional ballot, which is counted only after they produce other documents.

*Polling Hours:*⁸

- Forty-six states plus the District of Columbia allow people to cast their ballots before Election Day, although the time period ranges from as short as three days to almost seven weeks beforehand....
- Eight states allow ballots to be mailed.
- The rest allow voting only on one day and only between certain limited hours, which vary from state to state.

Question:

- *How might differing state regulations create challenges to voting for some Americans?*

⁷ Levinson and Levinson, 107.

⁸ Levinson and Levinson, 107-108.

V) Voting Rights and the Supreme Court

Shelby County v. Holder (2013):

The Voting Rights Act of 1965 was enacted as a response to the nearly century-long history of voting discrimination. Section 5 prohibits eligible districts from enacting changes to their election laws and procedures without gaining official authorization. Section 4(b) defines the eligible districts as ones that had a voting test in place as of November 1, 1964 and less than 50% turnout for the 1964 presidential election. Such districts must prove to the Attorney General or a three-judge panel of a Washington, D.C. district court that the change "neither has the purpose nor will have the effect" of negatively impacting any individual's right to vote based on race or minority status. Section 5 was originally enacted for five years, but has been continually renewed since that time.

Shelby County, Alabama, filed suit in district court and sought both a declaratory judgment that Section 5 and Section 4(b) are unconstitutional and a permanent injunction against their enforcement. The district court upheld the constitutionality of the Sections and granted summary judgment for the Attorney General. The U.S. Court of Appeals for the District of Columbia Circuit held that Congress did not exceed its powers by reauthorizing Section 5 and that Section 4(b) is still relevant to the issue of voting discrimination.

Chief Justice Roberts delivered the opinion of the Court:

...The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs."

...history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need[]" for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future.

...Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

***The Court declared Section 5 of the Voting Rights Act unconstitutional by a 5-4 vote.*

Justice Ginsburg, with whom Justice Breyer, Justice Sotomayor, and Justice Kagan join, [dissenting](#):

The Court holds §4(b) invalid on the ground that it is “irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time.” But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizen ship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. The sad irony of today’s decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA’s success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself.

[Brnovich v. Democratic National Committee \(2021\)](#):

In a 6-3 decision, the Supreme Court upheld Arizona laws preventing the state from counting ballots cast outside of the precinct where voters are directed to vote, even in state and national elections, and banning non-relative friends and neighbors from returning mail-in ballots. The Democratic National Committee (DNC) asserted that both laws violated Section 2 of the voting rights act, which makes it illegal to pass a voting law that “results in a denial or abridgement” of the right to vote “on account of race or color.” The DNC argued that these laws disproportionately and adversely affected Black, Native American, and Hispanic residents in Arizona. The Supreme Court, however, ruled that these laws did not create significant additional burdens and therefore did not violate the Voting Rights Act.

Justice Samuel Alito delivered the [opinion of the Court](#):

In light of the principles set out above, neither Arizona’s out-of-precinct rule nor its ballot-collection law violates §2 of the VRA. Arizona’s out-of-precinct rule enforces the requirement that voters who choose to vote in person on election day must do so in their assigned precincts. Having to identify one’s own polling place and then travel there to vote does not exceed the “usual burdens of voting.”... On the contrary, these tasks are quintessential examples of the usual burdens of voting....

...The plaintiffs were unable to provide statistical evidence showing that HB 2023 had a disparate impact on minority voters. Instead, they called witnesses who testified that third-party ballot collection tends to be used most heavily in disadvantaged communities and that minorities in Arizona—especially Native Americans—are disproportionately disadvantaged. But from that evidence the District Court could conclude only that prior to HB 2023’s enactment, “minorities generically were more likely than non-minorities to return their early ballots with the assistance of third parties.” How much more, the court could not say from the record. *Ibid.* Neither can we. And without more concrete evidence, we cannot conclude that HB 2023 results in less opportunity to participate in the political process.

Justice Kagan, with whom Justice Breyer and Justice Sotomayor join, [dissenting](#):

The Court always says that it must interpret a statute according to its text—that it has no warrant to override congressional choices. But the majority today flouts those choices with abandon. The language of Section 2 is as broad as broad can be. It applies to any policy that “results in” disparate voting opportunities for minority citizens. It prohibits, without any need to show bad motive, even facially neutral laws that make voting harder for members of one race than of another, given their differing life circumstances. That is the expansive statute Congress wrote, and that our prior decisions have recognized. But the majority today lessens the law—cuts Section 2 down to its own preferred size. The majority creates a set of extra-textual exceptions and considerations to sap the Act’s strength, and to save laws like Arizona’s. No matter what Congress wanted, the majority has other ideas.

This Court has no right to remake Section 2. Maybe some think that vote suppression is a relic of history—and so the need for a potent Section 2 has come and gone. But Congress gets to make that call. Because it has not done so, this Court’s duty is to apply the law as it is written. The law that confronted one of this country’s most enduring wrongs; pledged to give every American, of every race, an equal chance to participate in our democracy; and now stands as the crucial tool to achieve that goal. That law, of all laws, deserves the sweep and power Congress gave it. That law, of all laws, should not be diminished by this Court.

Questions:

- *Why did the Supreme Court rule part of the Voting Rights Act unconstitutional in 2013?*
- *To what extent did the Brnovich decision chip away at the rights guaranteed by the Voting Rights Act?*
- *Why might some people believe these decisions allowed for increased limitations on voting for some Americans?*

Student Resources and Activities:

Directions: Students will fill in the following graphic organizer using the information in these resources. The first row asks students to consider and synthesis the information in the documents. The second row asks students to draw informed conclusions and support them based on this information.

<p>Ways in which voting rights have expanded since 1787:</p>	<p>Ways in which voting rights have been limited in the 20th and 21st centuries:</p>	<p>Ways in which states have power over electoral procedures:</p>	<p>Ways in which the Supreme Court has power over voting and electoral procedures:</p>
<p>I do/do not believe that the Constitution extends voting rights to everyone who should have them because...</p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>Limitations on voting rights do/do not have a negative impact on the US's democracy because...</p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>States should/should not continue to determine the way in which registration and elections are conducted because...</p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>Who should determine electoral procedures and access in the US? Should this change based on circumstances? Why?</p> <p>1.</p> <p>2.</p> <p>3.</p>

Activity #1:

Using the resources and their graphic organizers, students will consider the following questions:

- To what extent should voting rights be considered a “fault line” in the Constitution?
- What suggestions would you make to increase access to the polls for all eligible Americans?

Option 1:

Students can respond to the questions in one of the following ways*: newspaper editorial or letter to the editor; speech (recorded on video); legal brief or opening argument to Congress/Supreme Court; PowerPoint presentation/Google slides; captioned illustration; song (recorded on video); poem; or iMovie. (Other presentation methods at the teacher’s discretion.)

Option 2:

Students can design a plan to make voting accessible to all Americans that they believe should have the right to vote, considering, as well, state power over electoral processes. This plan may be presented in any of the ways listed above, or in spreadsheet or outline form. Students can also write a letter, email, or script for a call to their representative(s) detailing their ideas. At the conclusion of this assignment, students can mail/send their messages!

All work must meet the following requirements:

- Clearly state an opinion on voting rights and their limitations in the United States in the 21st century.
- Thoughtfully respond to both questions.
- Use evidence from the resources to support claims.
- Acknowledge both sides of the debate.
- Include information on past events and current issues.
- Evaluate information to draw original conclusions.
- Remain focused on the topic and task assigned.

*The recommended activities refer to work students will complete independently. Teachers may also choose to use this information to prepare students for a debate, Socratic seminar, philosophical chairs activity, or any other large group activity where circumstances allow.

Activity #2:

In Chapter 22 of *Fault Lines in the Constitution* Cynthia and Sanford Levinson grade the Constitution based on the way that it fulfills the goals asserted in the Preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The authors divide their report card into the following categories--form a more perfect union; establish justice; insure domestic tranquility; provide for the common defense; promote the general welfare; secure the blessings of liberty to ourselves and our posterity—and assign composite grades based on the various aspects of the Constitution they evaluate in their book.

After studying **voting rights**, including the material in *Fault Lines* and outside sources, it's your turn to grade the Constitution! Based on what you learned and the ideas you formed about the Electoral College, please grade the Constitution in the following categories. Don't forget to add comments!

The Constitution's Report Card

Subject	Grade	Comments
Form a More Perfect Union		
Establish Justice		
Insure Domestic Tranquility		
Promote the General Welfare		
Secure Blessings of Liberty to Ourselves and Our Posterity		
AVERAGE		