

THE MYTH OF UNIVERSAL SUFFRAGE

- Voting Suppression in the United States -

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I. Introduction

The concept of American Exceptionalism is one that threads through political discourse between academics, pundits, politicians and arm chair activists alike. It is one that both unites and divides those on different sides of the political spectrum. This term, which came into the public dialogue most recently in 2010, refers to an ideology that the United States is unique and distinct, unlike any other nation. Some argue that this is due to its foundation as a nation built upon natural rights and a desire to be culturally different than the European societies that the founders left behind, doing so, by creating a government focused on democracy and personal freedom.¹⁾

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1) Ian Tyrrell, *What, exactly, is 'American exceptionalism'?*, The Week, October 21, 2016,

This cultural particularism has been described as both a reason and a cause behind global activism and intervention.

Central to the dialogue regarding the uniqueness of the United States is the focus its creation as a democratic nation. Often, to underscore the concept of American Exceptionalism as a virtue, those in power refer to the nation it as “the oldest democracy.”²⁾ This belief, that the United States is the oldest democratic nation is one that, along with its military and economic power, centralizes it in the international struggle for political democracy.

As outlined in his introduction to the collection “American Exceptionalism and Human Rights,” Michael Ignatieff defines this Exceptionalism in a way that is often overlooked by those who use it as a badge of honor. It is clear that the United States has been a leader in promoting international human rights, but Ignatieff argues that this leadership is contrasted with a resistance to adhere to those human rights standards in the States or in foreign policy matters.³⁾

In 2013, the Supreme Court overturned key provisions in the Voting Rights Act of 1965, which had previously monitored efforts to suppress votes. After that decision, many state legislatures seized the opportunity and passed numerous laws to restrict voting. This coupled with felon disenfranchisement laws and partisan gerrymandering have all worked together to reduce voter turnout. This article will explore the international movements to protect voting rights that the United States has participated in and then look inward at the last century of efforts and successes of the movement to stop people from voting in the “oldest democracy in the world.”

available at <http://theweek.com/articles/654508/what-exactly-american-exceptionalism>.

2) *Upfront*, interview by Mike Gousha with Senator Paul Ryan (WISN TV broadcast, June 26, 2016) “This is the oldest deliberative body in the world. We are the oldest democracy. And we have rules of decorum so that we can peacefully settle our issues and actually have a democracy.”

3) Michael Ignatieff, *American Exceptionalism and Human Rights*, Princeton University Press, 2005.

II. The Goal of International Suffrage

Since World War II, the United States has taken a leading role in the international ally building movements that have focused, at times on human rights. These foreign partnerships have been based on a core commitment to democratic principles. The most widespread and powerful step towards focusing on human rights was when the U.S., along with the allied powers, created the United Nations (U.N.) and soon thereafter, drafted the Universal Declaration of Human Rights in 1948.⁴⁾ The U.N. is an international organization with 193 Member States all with different types of governmental rule. Member States are not required to be democratic, but with the U.N. Charter specifying that the purpose of the United Nations is (among other things) “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…” it is clear that there is a purpose to protect rights from being taken away from people by the hand of a government. In particular, protection of all rights, not just the majority and has certainly included protecting the right to vote.

The rise of Nazi ideology and the power of the Third Reich in the 1930s took place when the government systematically restricted German citizens of Jewish descent’s political, legal and civil rights. Starting in 1933, national, state, regional and municipal offices made laws taking away rights from Jewish people.⁵⁾ These laws included revocation of professional licensing, restriction of travel and revocation of citizenship for Jewish citizens. These laws were justified by the Nuremberg Laws: The Reich Citizenship Law and the Law for the Protection of German Blood and German Honor, which codified the position of the Nazi party that those of Jewish descent were

4) *Id.* at 1; Stephen C. Schlesinger, *Art of Creation: The Founding of the United Nations*, Westview Press, 2003.

5) United States Holocaust Memorial Museum, Anti-Semitic Legislation 1933-1939, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007901> (Accessed November 10, 2017).

subhuman.⁶⁾

This systematic dehumanization and attempted genocide of a group of people, based on their religion and ethnicity (along with similar atrocities committed towards homosexuals, the disabled and political opponents), and the entry of the threat and reality of nuclear war after the U.S. bombing of Hiroshima on August 6, 1945 led to the allied forces regrouping and creating the United Nations.⁷⁾ As stated previously, membership to the United Nations does not require that a government is democratic, but as time progressed, democracy has been universally recognized as one of the core values and principles of the organization.⁸⁾

The core of democratic policy is the right to vote and the right to public participation in government. This right was first asserted in the Universal Declaration of Human Rights, Article 21. It states that:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.⁹⁾

This dedication to full democratic elections with unencumbered voting privileges is clear, but this declaration is not binding.¹⁰⁾ The International

6) Saul Friedländer and Orna Kenan. *Nazi Germany and the Jews, 1933-1945* (49-51) Harper Perennial, 2009.

7) Roger Normand and Sarah Zaidi, *Human Rights at the UN. The Political History of Universal Justice* (7-9) Indiana University Pres (2008).

8) United Nations, Global Issues, Democracy, <http://www.un.org/en/sections/issues-depth/democracy/>

9) G.A. Res. 217A(III), U.N. Doc. A/810 (1948) [hereinafter UDHR].

10) Morsink, Johannes. *The Universal Declaration of Human Rights: origins, drafting, and intent* (60) University of Pennsylvania Press, 1999.

Covenant on Civil and Political Rights, which was entered into force in March 1976, does bind signatories to the following:

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...¹¹⁾

The U.S. is a party to the ICCPR, which it ratified in 1992. The U.S. has also signed but not ratified the American Convention on Human Rights, which guarantees the right to vote to all citizens and also to be elected in genuine periodic elections.¹²⁾

These international decrees and covenants are unequivocal in their support and demand for equal and universal suffrage. The history of the U.N. has given both a shield and a sword for ratified countries, like the U.S. to use when protecting voting rights both in their countries and other ratified countries.

1. Intergovernmental Democratic Intervention

The United Nations has numerous programs which focus on supporting democracy and governance, but I will focus mainly on those which the United States is active as a member state or a leading representative.

The United Nations Department of Political Affairs (UNDPA) has field missions around the world, assisting member countries with, among other things, elections and decolonization. According to the overview on their

11) Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

12) Buergenthal, Thomas. *The American Convention on Human Rights: Illusions and Hope*, Buff. L. Rev. 21 (1971): 121.

website, more than 100 countries have requested and received U.N. election assistance since 1991. The field missions can provide technical assistance (review of electoral laws and regulations, voter registration, use of technologies, voter and civic education, election security), election observation (to ‘certify’ electoral processes), and organization or supervision of elections (in rare instances, such as Cambodia (1992–1993) and Timor–Leste (2001–2002). The Under–Secretary–General for Political Affairs is Jeffrey Feltman, who directly oversees the UN electoral assistance to “dozens of its member states each year.”

The United Nations Development Programme (UNDP) works in about 170 countries and territories to help eradicate poverty and reduce inequalities and exclusion. The Executive Board is made up of 36 countries, one of which the United States is a member, incidentally, the headquarters are also in New York City and a representative from the United States held the position of the Administrator from the inception of the group in 1966 until 1999.¹³⁾ The UNDP focuses on inclusive political processes, stating that societies practicing exclusionary civic participation tend to be more vulnerable to fragility and conflict. This further underscores the benefit in protecting the right to vote and encouraging civic involvement. The UNDP, states “Many countries, including mature democracies continue to face challenges related to the integrity and credibility of elections.” The UNDP can help support national efforts for legal reform, coordinate electoral assistance, encourage the political participation of marginalized groups and more.¹⁴⁾

The United Nations Democracy Fund (UNDEF), was created in 2005 to support democratization efforts around the world. Although the UNDEF focuses on transition and consolidation into democracies, it has supported

13) United Nations Development Programme, *The History of the UNDP*, <http://www.borgenmagazine.com/the-history-of-the-undp/>, (Accessed November 10, 2017), *About Us* <http://www.undp.org/content/undp/en/home/about-us.html> (Accessed November 10, 2017).

14) United Nations Development Programme, *Electoral Cycle Support*, <http://www.undp.org/content/undp/en/home/democratic-governance-and-peacebuilding/inclusive-political-processes/electoral-cycle-support.html> (Accessed November 10, 2017).

more than 100 countries by providing funding for two year projects that focus on community activism, women's rights and empowerment, human rights, electoral participation and integrity. The United States is one of the 18 members, and was one of the biggest donors between 2011 and 2013, according to the website.¹⁵⁾ The UNDF programs can be country specific or global in range and often focus on sustaining democracy and protecting vulnerable groups in democratic societies.¹⁶⁾

The United Nations Human Rights Office of the High Commissioner (OHCHR) provides assistance to governments to help implement international human rights standards. The OHCHR is mandated to promote and protect the rights of all people established in the Charter of the UN. They set standards, monitor activity in member states, and help states implement recommendations. The Assistant Secretary General's office is in the New York office of the UN. The OHCHR has Universal Periodic Review recommendations for all countries, whether they are member states or non-member states. Following reviews of these countries, recommendations are made to the General Assembly.¹⁷⁾

A partner to the U.N., the Organization for Security and Co-Operation in Europe (OSCE), is another intergovernmental organization that works together for "stability, peace, and democracy."¹⁸⁾ This organization was created during the Cold War to allow for diplomacy between the East and West to occur. The OSCE has 57 participating states, the United States included. Part of the OSCE's purpose is to observe elections throughout the participating states to ensure that each state has the basis for legitimate governing.¹⁹⁾ The Office of Democratic Institutions and Human rights

15) United Nations, *Democracy Fund* <https://www.un.org/democracyfund/about-undef>.

16) Some examples of UNDEF programs are: Assessing Democracy Assistance, Strengthening the Network of Democracy Research Institutes, Campaign for Human Rights promotion by encouraging participation in civic and democratic initiatives.

17) United Nations Human Rights Office of the High Commissioner, *About Us* <http://www.ohchr.org/EN/AboutUs/Pages/BriefHistory.aspx> (Accessed November 10, 2017).

18) Organization for Security and Co-Operation in Europe, *Factsheet: What is the OSCE?* <http://www.osce.org/whatistheosce/factsheet> (Accessed November 10, 2017).

oversees the calendars of elections and historically has monitored transitioning governments. More recently, the organization has been focusing on longer established democracies, including a report of the November 2016 U.S. elections, which will be discussed in full below. By focusing on absentee, early and voting by mail the OSCE region is monitored to ensure enfranchisement in participating states.

2. U.S. Focus on International Democratization

Samuel P. Huntington first identified the eras of democratic transitions as the first, second and third wave of democratization. His analysis has been widely accepted and occasionally contested as the leading description of the pattern of global democratization.²⁰⁾ For the purposes of this paper, it will serve as a general background to discuss the U.S. involvement in the rise of democracy and democratic intervention.

Huntington identified the beginnings of the first era or “wave” of voter suffrage as commencing in the 1820s, with the United States allowing a large percentage of male citizens achieve suffrage and subsequently around 29 democracies rising up worldwide.²¹⁾ The background of these “waves” of democracy, was an international focus of the U.S. government in a world that was globalizing. The turn of the century started with an amendment to a treaty between the U.S. and Cuba which gave the U.S. government oversight over Cuba and limited treaty negotiation without U.S. approval.²²⁾ This amendment was controversial among many in the Cuban government,

19) Organization for Security and Co-Operation in Europe, *Elections* <http://www.osce.org/elections> (Accessed November 10, 2017).

20) Havard Strand, Havard Hegre, Scott Gates and Marianne Dahl, *Democratic Waves? Global Patterns of Democratization, 1816-2008, fifteenth annual meeting of the National Political Science Conference, January, Trondheim, Norway. 2007.*

21) Samuel P. Huntington, *Democracy's Third Wave*, *Journal of Democracy* 2.2, 12-34 (1991).

22) Pedro Capo-Rodriguez, *The Platt Amendment*, *The American Journal of International Law*, Vol. 17, No. 4, 761-765 (Oct. 1923).

as it was seen as an infringement of sovereignty, but some argued it was a “moral duty or a legal right on the part of the United States to safeguard Cuban independence... a means of securing for Cuba the blessings of liberty and the development of its people in the practice of self-government and orderly citizenship.”²³⁾

The wave of citizen-led government creation across the globe continued for over a century, only starting to reverse itself with the rise of power of Mussolini in Italy, 1922.²⁴⁾ The next two decades reduced the number of democracies to 12 in the world. After World War II, the second wave came, a new focus on the rights of people and the protection of those without power saw an increase in democratic states rising to 36. In addition to the intergovernmental organizations described in the section above, whose inception was started directly after the war ended, within the next two decades the United States was dominated by anticommunist policy that focused on helping countries grow economically and create democratic (pro-Western) systems of government.²⁵⁾ The U.S. continued to advocate for democracy, in particular with countries that were developing and needed assistance. It is then that the United States started to focus military intervention as an effective foreign policy tool.²⁶⁾

Throughout the next century, intervention by the United States has been diplomatic, economic and through military force. Intervention in most of these cases has never been straight forward, and often in the instances of military force, the results have been devastating, for example, the devastating losses of the Vietnam intervention, which led to nearly a decade of brutal war. The United States has continuously intervened (in some instances) under the rationale of democracy promotion.²⁷⁾

23) *Id.* at 765.

24) *Id.*

25) Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve*, Carnegie Endowment, 2011.

26) Benjamin O. Fordham, *Power or Plenty? Economic Interests, Security Concerns and American Intervention*, *International Studies Quarterly* 52(4), 737-58 (2008).

Numerous governmental groups and policies have been built on the premise of promotion of self-government throughout the world. The U.S. Agency for International Development (USAID) and the Bureau of Democracy, Human Rights and Labor (both within the Department of State) are focused on promoting democracy abroad. In addition, George H.W. Bush introduced the Middle East Democracy Fund, which would later, after the September 11, 2001 attacks grow into the “MENA” programs, which focus on American policy in the Middle East and North Africa. These programs have been built as international democracy promotion and have had mixed results, it has been argued that these programs are self-serving and have actually further destabilized the region.²⁸⁾

It did appear that the policy goal of global democratization was not one that would be advanced as openly as in the past. During his presidency, President Barak Obama spoke at Cairo University, in Egypt where he discussed cooperation between MENA and the West. In his speech he stated:

I know there has been controversy about the promotion of democracy in recent years, and much of this controversy is connected to the war in Iraq. So let me be clear: no system of government can or should be imposed upon one nation by any other.

That does not lessen my commitment, however, to governments that reflect the will of the people.²⁹⁾

As in politics and in life itself, the true purpose of action that one takes is not often explicitly and truthfully defined. When negotiating with an ally or an adversary, strategy must always come into play. It is quite simple to guess the reason for most intervention by global super powers (power or a

27) Most notably, not intervening with Saudi Arabia, where women were not able to vote until 2011.

28) Katerina Dalacoura, *US democracy promotion in the Arab Middle East since 11 September 2001: a critique* (963-979) *International Affairs* 81.5 (2005).

29) Barak Obama, Speech at Cairo University, Transcript, New York Times, June 4, 2010.

threat to power). Despite this pessimistic guess, the U.S. has built policy and devoted many resources with the stated goal of promoting free and fair elections and universal voter suffrage as a rationale and necessity for international intervention.

III. History of Voting Suppression in the United States

In *Yick Wo v. Hopkins*, the US Supreme Court held that voting rights are “fundamental” because the right to vote is “preservative of all rights.”³⁰⁾ This holding underscores that the right to vote is the most important right, as all other rights “are illusory if the right to vote is undermined.”³¹⁾

It is no secret that the very foundation that is often touted as the model for democracy worldwide was, in fact, created as an exclusionary system and not democratic for many. The colonial, then state governments have a long and exhausting history of refusing to give the right to vote to those who are not in power (women, minorities, the poor).

1. We (some of) the People

When the first federal government of the United States was founded, the colonies had already been voting in colonial legislatures independently. Generally speaking, out of the colonies, only people who owned land could vote, this was predominantly white men (as land rights of those native to the land were often not recognized).³²⁾ This rationale allowed those with power to maintain it and the rationale given was that minority religious

30) 118 US 356, 371 (1886).

31) *Wesberry v. Sanders*, 376 US 1, 17 (1964).

32) Donald Ratcliffe, *The Right to Vote and the Rise of Democracy, 1787-1828*, *Journal of the Early Republic*, 33 219-254, (Summer 2013).

sects, racial groups were unacceptable due to lack of civic commitment and that laborers, tenant farmers, unskilled workers, and indentured servants did not have a “stake in society,” or a permanent interest in the community and if enabled to participate they may be susceptible to corruption.³³⁾ Thus began the expressed distrust and codified suppression of minorities and the poor.

As the U.S. Constitution does not define who is eligible to vote, this issue was left up to the states. Some states did allow freed slaves to vote³⁴⁾ and women could vote in New Jersey, until 1807, if they could meet property requirements.³⁵⁾ These property ownership requirements were dismissed by 1865 in all states, but a couple remained with voting tax requirements.³⁶⁾

Not everyone was pleased with these laws and considerable debate occurred regarding who could vote in those first twenty years of the country. The considerations that have been reported to have been made during the political debates that changed these laws were both focused on the individual (who is it? Why should they be able to vote? Are they important enough?) also focusing on the community or society (is it in the best interest of the society if women, illiterates, non-church members, non-residents or criminals can vote?).³⁷⁾

Leading up to the Civil War, as stated before, free men of color were granted suffrage in some states. But there were additional limitations, for example, in New York, only Black men possessing \$250 worth of property could vote, but white men had no such requirement.³⁸⁾ In the newly settled

33) *Id.* at 220.

34) Bernard Grofman and Chandler Davidson, *Controversies in Minority Voting, The Voting Rights Act in Perspective*, Brookings Institution, 7 (1992) (New York, New Jersey, Pennsylvania and North Carolina).

35) Ratcliffe at 229.

36) Stanley L. Engerman and Kenneth L. Sokoloff, *The Evolution of Suffrage Institutions in the New World*, *The Journal of Economic History* 65:4, 891-921, 907 (2005).

37) *Id.* at 903.

38) Kirk H. Porter, *A History of Suffrage in the United States* (Chap 1) Chicago (1918).

areas, residency requirements, race, gender and age restrictions were the identity disqualifiers and a record of committing infamous crimes was the behavioral ban on voting.

2. Reconstruction of the Fables

From 1861–65, the United States engaged in a civil war, the cause being the attempt of the Southern states (the Confederacy) to secede from the union due to their desire to keep Black people in bondage.³⁹⁾ The Confederate cause was to maintain this system of bondage (slavery) as a form of labor and white supremacy as a way of life. On August 20, 1866, President Andrew Johnson signed a Proclamation declaring that the war was over and the insurrection had ended.⁴⁰⁾ Slavery was no longer legal, but the battle against white supremacy was still raging throughout both the South and the North. The idea that non-white citizens had equal rights of citizenship, despite being free, in the North was always a farce.

As previously stated, numerous Northern states did not give the right to vote to non-white men prior to the Civil War, about six percent of the northern Black population lived in those states which had extended the right to vote to Blacks.⁴¹⁾ Prior to the Civil War, there were many African Americans who were campaigning to obtain the right to vote. Also included in the disenfranchised were Native Americans. Due to the Marshall Trilogy, which defined the Cherokee nation as a political society, Native Americans were treated as people in an occupied land would be, without the ability to

39) Ta-Nehisi Coates, *What This Cruel War Was Over*, The Atlantic, June 22, 2015, available at <https://www.theatlantic.com/politics/archive/2015/06/what-this-cruel-war-was-over/396482/> (Accessed November 10, 2017).

40) Andrew Johnson, *Proclamation 157- Declaring that Peace, Order, Tranquility and Civil Authority Now Exists in and Throughout the Whole of the United States of America*, August 20, 1866.

41) Susan Cianci Salvatore, *Civil Rights in Action: Racial Voting Rights* National Park Service, 7(2007, revised 2009) https://www.nps.gov/nhl/learn/themes/civilrights_votingrights.pdf (Accessed November 10, 2017).

vote.⁴²⁾

The laws passed by the federal government, known as the Military Reconstruction Acts ordered the Southern states to modify or re-write constitutions that would grant Blacks the right to vote. This limited legislation was not enough to protect the right to vote. Republicans in Congress were aware that the Reconstruction statutes would only reach the Southern states and in the North, there was still wide disenfranchisement.⁴³⁾ Legislative endorsement of a constitutional amendment to outlaw discrimination based on race was gaining momentum.

In 1870, the Fifteenth Amendment was adopted, which guaranteed that citizens of the United States right to vote could not be denied or abridged because of race, color or previous condition of servitude. This amendment did not address non-racial qualifications that would later be shown to have both discriminatory intent and effect. This amendment also limited the right to vote to men, leaving women of all races and colors, along with non-citizens Natives without the right to vote. Non-native women would not gain the right to vote until 1920. Native Americans were not able to vote until June 2, 1924, but some states did not allow Native Americans to vote until 1957.⁴⁴⁾

A constitutional amendment was thought to be a huge victory, but the lack of inclusiveness and because the amendment did not GIVE the right to vote to Black men left the states a lot of room to continue to suppress the vote of Black citizens. The era after the emancipation of the slaves has a history of racial oppression and resistance to equality. Black citizens both in the former slave states, where nearly 90 percent lived, and also in the free states did not enter this post-Reconstruction era in a strong position, in

42) *Cherokee Nation v. Georgia*, 30 US 1 (1831).

43) *Id* at 8, "Between 1865 and 1868, white voters in Connecticut, Kansas, Michigan, New York, Ohio, and Wisconsin rejected referenda extending the ballot to Blacks".

44) Daniel McCool, Susan M. Olson, and Jennifer L. Robinson. *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (10-17) Cambridge University Press, 2007.

many instances with their status deteriorating.⁴⁵⁾

The response to the reconstruction of the union was swift and wide, state legislation was passed as a response to growing Black political power and social status. A divided federal legislature fought and passed twelve pieces of legislation that were an attempt at Reconstruction that were ineffectively enforced by the executive branch and the judicial branch and were met with state legislation to counteract the goals of civil rights for former slaves.⁴⁶⁾ These state laws were known as Jim Crow laws and were an effort to regain political control in the South.

Legal methods were not the only ones used to obtain political control, violence, intimidation and voting fraud were also used to attempt to stop Black suffrage.⁴⁷⁾ In addition to those methods, a variety of systems were used to suppress Black votes: tight residency requirements, poll taxes, literacy requirements, grandfathering provisions (which exempted most whites from application of tests), and more. These laws were part of a concerted effort where the purpose and goals were openly talked about.

For example, in Virginia, disenfranchising criminals was easily accepted, but open arguments were had about how they could disenfranchise the maximum amount of Black voters without losing some of their white voters as well. At a constitutional convention in 1901, Carter Glass, drafted legislation which enacted a poll tax, a requirement that registrants apply without assistance and in their own handwriting, and the ability for local officials to exclude any Black Virginians who met the other requirements after a series of questions were asked by an election official. He responded to concerns that prospective white voters may also be disenfranchised by

45) James L. Roark, *Masters without Slaves: Southern Planters in the Civil War and Reconstruction* (45) (New York, 1982).

46) For example, the Civil Rights Act of 1866, Military Reconstruction Acts (14 Stat. 428-430, c.153; 15 Stat. 2-5, c.6; July 19, 1867, 15 Stat. 14-16, c.30; and 15 Stat. 41, c.25), Enforcement Act of 1870, 16 Stat. 140, Enforcement Act of 1871, U.S. Const. amend. XIII, U.S. Const. amend. XIV, and U.S. Const. amend. XV.

47) James W. Fox, Jr. *Intimations of Citizenship: Repressions and Expressions of Equal Citizenship in the Era of Jim Crow*, 50 How. L.J. 113, 200 (2006).

telling them that the suffrage article “does not necessarily deprive a single white man of the ballot, but will inevitably cut from the existing electorate four-fifths of the negro voters. That was the purpose of this convention; that will be its achievement.”⁴⁸⁾ He went on to respond to a question of the possibility of open fraud with this clear elaboration of discriminatory intent:

By fraud, no; by discrimination, yes. But it will be discrimination within the letter of the law, and not in violation of the law. Discrimination! Why, that is precisely what we propose; that, exactly is what this Convention was elected for--to discriminate to the very extremity of permissible action under the limitation of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the [W]hite electorate ... [W]e have accomplished our purpose strictly within the limitations of the Federal Constitution by legislating against the characteristics of the Black race, not against the “race, color, or previous condition” of the people themselves.

Carter Glass, would later go on to be Secretary of the Treasury under President Woodrow Wilson and Virginia State Senator for over twenty-five years.⁴⁹⁾

Jim Crow laws were predominantly in the South, but Arizona, California, Oklahoma, Oregon, Washington and Wyoming all had some form of English literacy test and many all throughout the nation also had poll taxes.⁵⁰⁾ It should be also noted, that these laws were rapidly changing from laws to suppress Black votes to those of other minorities, such as Asians, Latinos, and Native Americans, when they were finally able to vote. For example, in 1879, California, a state which is now known for progressive politics had a

48) Matt Ford, *The Racist Roots of Virginia's Felon Disenfranchisement*, The Atlantic, April 27, 2016., available at <https://www.theatlantic.com/politics/archive/2016/04/virginia-felon-disenfranchisement/480072/> (Accessed November 10, 2017).

49) Fox at 201.

50) Pagtty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, Ariz. St. LJ, 2015, David H. Hunter, “The 1975 Voting Rights Act and Language Minorities.” *Cath. UL Rev.* 25 (1975): 250.

constitutional provision prohibiting Chinese from working or living in the state, thus excluding them completely from voting.⁵¹⁾ It should be noted that the California Constitution was passed after the 1882 Federal Chinese Exclusion Act which barred many Chinese from entering the country.

Some states stopped Black citizens from voting by making registration very difficult, having frequent re-registration, registration at inconvenient times for laborers (planting season in the South), requirements for street addresses (at the turn of the century, many farms where former slaves worked did not have street names or numbers). These requirements did not go unchallenged, in *Giles v. Harris*, a Black janitor qualified to vote, but was rejected the right by election officials. He brought a suit, on behalf of more than five thousand other citizens that were similarly situated. Justice Oliver Wendell Holmes delivered the opinion denying this claim, holding nonsensically that if the Alabama Constitution violated the 15th amendment, then the Alabama Constitution was invalid and then Mr. Giles would not be legally registered to vote. Holmes further held that the federal court had no jurisdiction over the state electoral practices.⁵²⁾ Giles then filed suit in state court and again lost with similar circular logic.⁵³⁾ This signaled that the Federal Courts were not going to protect Black voters from this blatant discrimination, with further support for these practices in 1937, when the Court upheld Georgia's poll taxes as constitutional.⁵⁴⁾

The effort to create a union after the civil war had shown itself to be ineffective and the Federal promise of granting Black Americans equal rights had been abandoned. The Federal legislature hadn't passed a law protecting minorities since the Civil Rights Act of 1875, the Executive branch did not enforce those laws previously passed, and the Supreme Court supported segregation and discriminatory voting practices.⁵⁵⁾ The Jim Crow

51) Constitution of the State of California, 1879, *available at* <http://archives.cdn.sos.ca.gov/collections/1879/archive/1879-constitution.pdf> (Accessed November 10, 2017).

52) *Giles v. Harris*, 189 U.S. 475 (1903).

53) *Giles v. Teasley*, 193 U.S. 146 (1904).

54) *Breedlove v. Suttles*, 302 U.S. 277 (1937).

laws continued to thrive; felon disenfranchisement, literacy tests, poll taxes were held to be constitutional and these laws did what they were set out to do. By 1940, only three to five percent of voting age African Americans in the South were registered to vote.

3. Voting Rights Act

In 1944, the Supreme Court held that the Texas Democratic Party could not have a whites only primary.⁵⁶⁾ This started a large push in voters registration within the civil rights movement. By 1947, voter registration had increased from under five percent to approximately twelve percent of the Black voting age population.⁵⁷⁾

The Civil Rights movement, led by courageous activists, young and old, fought to get federal protection for all. This movement started in churches and local communities and got nationwide attention through nonviolent protests which were often met by state or state sanctioned violence.⁵⁸⁾

President John F. Kennedy introduced civil rights legislation to Congress in 1963, but was assassinated prior to it being debated. In July of 1964, President Johnson, after 57 working days of filibuster in the Senate signed the Civil Rights Act of 1964 into act. The final vote was 71 to 29. This law barred arbitrary voter registration requirements but was silent as to literacy tests. Earlier that year, the 24th amendment was ratified, prohibiting the use of poll taxes in federal elections.

Just over a year later, the Voting Rights Act of 1965 (VRA) was passed. In just over a week, 281 new Black voters registered to vote in Selma,

55) Plessy v. Ferguson, 163 U.S. 537 (1896).

56) Smith v. Allwright, 321 U.S. 649 (1944).

57) John Lewis, Archie E. Allen, *Black Voter Registration Efforts in the South*, 48 Notre Dame L. Rev. 105 (1972).

58) Alan Taylor, 1964: Civil Rights Battles, The Atlantic, May 28, 2014, available at <https://www.theatlantic.com/photo/2014/05/1964-civil-rights-battles/100744/> (Accessed November 10, 2017) ; See also, Freedom Riders, Freedom Summer or Mississippi Summer Project.

Alabama. It was more than had registered in that County for the 65 years prior.⁵⁹⁾ The purpose of the VRA was to “rid the country of racial discrimination in voting.”⁶⁰⁾ The federal legislation banned literacy tests and provided federal oversight of any change in “standard, practice, or procedure with respect to voting” in areas where less than 50 percent of the nonwhite eligible voters had not registered to vote.⁶¹⁾ It allowed the U.S. attorney general to investigate the use of poll taxes in both state and local elections⁶²⁾(which were found to be unconstitutional in 1966⁶³⁾).

In order to obtain preclearance to vote, the jurisdiction must demonstrate that the proposed change did not have the purpose nor the effect of discriminating on the basis of race. The federal oversight was to be reviewed every five years and if necessary, continued.⁶⁴⁾ Congress reauthorized Sections 4(b) and 5, in 1970, 1975, and 1982 (for an additional 25 years). In 1975, Congress significantly increased the coverage to include discrimination against “language minority” groups.⁶⁵⁾ In 2006, Congress held extensive hearings about whether there remained a need for the voter registration oversight and concluded that, “without the contention of the [VRA’s] protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.”⁶⁶⁾

In 2013, the Supreme Court, in a 5-4 ruling, *Shelby County v. Holder*, found that the formula used to determine which state and local governments

59) James C. Cobb, *The Voting Rights Act at 50: How it Changed the World*, Time Magazine, August 6, 2015, available at <http://time.com/3985479/voting-rights-act-1965-results/> (Accessed November 10, 2017).

60) *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966).

61) Voting Rights Act of 1964 (PL 89-110, 6 August 1965).

62) *Id.*

63) *Harper v. Virginia State Board of Elections*, 383 US 663 (1966).

64) The federal review of those “special coverage” jurisdictions applied to every Deep South state except Florida, plus Virginia, and approximately 40 counties in North Carolina.

65) Act of 1975, 89 Stat. 401-401.

66) Voting Rights Act Reauthorization and Amendments Act of 2006 (2006 Reauthorization), Pub. L. No. 109-246, § 2(b)(1)-(2), 120 Stat. 577.

must have federal oversight on voter registration was unconstitutional.⁶⁷⁾ This, essentially, removed federal oversight from any changes to voter registration. States now have complete control over their voter registration practices. This section of the VRA was the “primary vehicle” to protect minorities from voter suppression and now it has thrown out.

IV. Suppression in the 21st Century

After the 2000 election, which was the closest presidential election in history and only 537 votes separating the two candidates in the decisive state, newly elected President Bush began a “crackdown” on voter fraud. In line with this often voiced Republican concern of rampant voter fraud, federal legislation was passed in 2002 to set minimum requirements for federal elections. These requirements included identity verification for all new voters.⁶⁸⁾ This minimum requirement allowed states to enact their own stricter laws. At the federal level, there was debate as to the requirement for photo identification for first-time voters.

This (voter fraud), is the constant, continued justification for restrictive voting laws, yet no evidence showing voter fraud has been provided. Despite a five year “crackdown,” President Bush’s justice department had found almost no evidence of any organized effort to skew federal elections.⁶⁹⁾ In 2014, Professor Justin Levitt, conducted an analysis of elections from 2000 to 2014 and found only 31 incidents of in-person voter fraud, out of 1 billion ballots.⁷⁰⁾ This was in direct opposition to the frequent argument

67) *Shelby County v. Holder*, 570 U.S. 2 (2013).

68) Help America Vote Act of 2002, Pub. L. 107-252.

69) Eric Lipton and Ian Urbina, “In 5-Year Effort, Scant Evidence of Voter Fraud.” *New York Times*, April 12, 2007, <http://www.nytimes.com/2007/04/12/washington/12fraud.html>. (Accessed November 10, 2017).

70) Justin Levitt, “A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast.” *The Washington Post*, August 6, 2014. (Accessed November 10, 2017). <https://www.washingtonpost.com/news/wonk/wp/2014/>

from Republican law makers that fraud had corrupted the political process.⁷¹⁾

Since the federal law set the standard for the minimum allowable, many more states have enacted laws making it harder for people to vote. After a Democratic presidential victory in 2008, and a Supreme Court victory where Indiana's photo ID requirement was upheld, Republican started efforts to make it harder for people to vote. Republicans began a third generation of racially discriminatory laws (voter suppression laws, coming after Jim Crow Laws and the original slave codes) to continue to ensure Republican domination. Between 2011 and 2012 a total of 180 new voter suppression laws were introduced in 41 states.⁷²⁾ They were successful in passing laws in 23 states between 2010 and 2017.⁷³⁾ In the 2016 election, 14 states faced new restrictions in voting rights. The new restrictions include: (1) requiring government issued photo IDs to vote; (2) restriction of voter registration drives; (3) purging voter rolls; (4) reducing early voting; (5) disenfranchising ex-felons; and (6) requiring proof of citizenship to register or vote. Below is a description of some of the efforts that have been successful still in place.

1. Voter ID Laws

The strict photo ID requirement is the most burdensome restrictive voting law in the United States. Voter ID laws vary from state to state, with some It is difficult to explain this to my colleagues and students who live in countries with national photo identification. In many countries, producing photo identification is not a burden at all, but in the U.S., where there is

08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?tid=a_inl&utm_term=.b07475bbdc88.

71) Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice, November 9, 2007, <https://www.brennancenter.org/publication/truth-about-voter-fraud> (Accessed November 10, 2017).

72) *Id.* at 1239.

73) The Brennan Center for Justice at NYU School of Law, "New Voting Restrictions in America" May 10, 2017, https://www.brennancenter.org/sites/default/files/analysis/New_Voting_Restrictions.pdf.

mandatory government issued photo identification, many people cannot meet this requirement without substantial effort. In fact, approximately 11 percent of adult Americans lack government-issued photo identification.⁷⁴⁾ This study, by the Brennan Center also showed that twenty-five percent of Black voting age citizens have no current government-issued photo identification, compared to eight percent of white voting age citizens, elderly and low income citizens are also less likely to have this required photo identification.

States with strict voter identification laws often offer free identification cards, but the collateral costs of obtaining that card are not insignificant and are sometimes difficult to obtain (copies of birth certificate or social security card, transportation to and from the office while it is open)

Prior to 2006, no state had required to produce government issued photo identification. After Georgia and Indiana passed strict photo identification laws in 2005 and Indiana's was upheld by the Supreme Court in a 6-3 decision, many states joined in passing laws requiring voter identification.⁷⁵⁾

Again, despite the rationale given for voter identification laws, there is virtually no evidence of in-person voter fraud, yet as of 2017, 34 states have laws requesting or requiring voters to show identification at the polls. Some states have attempted to pass strict requirements for voter identification and have been blocked by federal or state courts. It is clear that these laws are the ghosts of the Jim Crow laws, designed with similar intentions as Carter Page had during the Jim Crow era.⁷⁶⁾

For example, there is currently a pending case in Texas to find that the SB 14 bill (a strict photo voter ID law) violates the constitution. The Texas

74) The Brennan Center for Justice at NYU School of Law, "Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification," November 2006. http://www.brennancenter.org/sites/default/files/legacy/download_file_39242.pdf (Accessed November 10, 2017).

75) *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

76) Janelle Bouie, *Republicans Admit Voter ID Laws Are Aimed at Democratic Voters*, Daily Beast (Aug. 28, 2013), <http://www.thedailybeast.com/articles/2013/08/28/republicans-admit-voter-id-laws-are-aimed-at-democratic-voters.html> Mr. Bouie noted that several Republican leaders around the country admitted that voter ID laws and the curtailment of early voting were designed to suppress votes for Democratic candidates.

State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives have filed suit, claiming that this law denies minority voters an equal opportunity to participate in the political process and that the measure burdens the fundamental right to vote, as it was specifically enacted to exclude minority voters from the political process.⁷⁷⁾ In April 2017, the Federal District Court held that the legislation was passed with the intent to discriminate. The case is currently on appeal to the United States Court of Appeals for the Fifth Circuit. ⁷⁸⁾

In May of 2017, the Supreme Court denied the petition for writ of certiorari following North Carolina's appeal of the Fourth Circuit Court of Appeals holding that their strict voter ID requirements and restrictions on early voting and same day registration, "where enacted with racially discriminatory intent."

2. Felon Disenfranchisement or Civil Death

More than six million American adults, 2.5 percent of the US voting age population, 1 in every 40 adults, were not able to vote in the 2016 election because they have a felony conviction on their criminal record.⁷⁹⁾ This has been normalized in the U.S., but it is far from normal worldwide. Disenfranchisement is rare in the industrialized world, and the U.S. is one of the only countries that has citizens that are not incarcerated and have lifetime disenfranchisement, irrespective of the nature of the crime previously committed.⁸⁰⁾ America leads the world in incarcerating its own

77) *Id.*

78) Manny Fernandez, *Federal Judge Says Texas Voter ID Law Intentionally Discriminates*, NY TIMES, April 10, 2017 available at <https://www.nytimes.com/2017/04/10/us/federal-judge-strikes-down-texas-voter-id-law.html> (Accessed November 10, 2017).

79) Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State Level Estimates of Felony Disenfranchisement, 2016." The Sentencing Project, October 6, 2016.

80) Available at <http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (Accessed November 10, 2017).

citizens and in the majority of states take away a citizen's right to vote for either being in custody or having a criminal conviction. Only two states have no restrictions on voting for people in custody or with criminal convictions.⁸¹⁾

The racial impact of disenfranchisement is shocking. In four states (Florida, Kentucky, Tennessee, and Virginia), more than one in five black adults is disenfranchised.⁸²⁾ In Alabama and Florida, 31% of all Black men are permanently banned from voting. Although felon disenfranchisement laws are facially race-neutral, racial animus has been shown, as the historical roots of felon disenfranchisement laws started during the Reconstruction era as a form of Jim Crow laws.⁸³⁾ Many of the specifics of the laws adopted during this period appeared to target crimes for which Black people were particularly likely to be convicted.⁸⁴⁾ These crimes were often those that whites were simply not arrested for, or those that had a high rate of occurrence among the poor. The very high proportion of disenfranchised African Americans today potentially provides a direct link back to the origins of the state laws. These men and women without civility, that have suffered a "civil death" and will never have political power are created by the darkness of the ghost of slavery.

The practice of voter disenfranchisement has somehow survived constitutional challenge. In 1974, the Supreme Court refused to analyze the issue under the compelling state interest test and upheld lifetime disenfranchisement.⁸⁵⁾ But, about a decade later, further bolstering the argument that felon disenfranchisement statutes were motivated by racial animus, found in *Hunter v. Underwood*, that the law was passed with

81) Maine and Vermont, *Id.*

82) *Id.*

83) Behrens, Angela, Christopher Uggen, and Jeff Manza. "Ballot manipulation and the "menace of Negro domination": Racial threat and felon disenfranchisement in the United States, 1850 - 2002." *American Journal of Sociology* 109.3 (2003): 559-605.

84) Andrew L. Shapiro, *Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy*, 103 *Yale L.J.* 540, November 1993.

85) *Richardson v. Ramirez*, 418 U.S. 24 (1974).

discriminatory purposes.⁸⁶⁾ The concept of felon disenfranchisement was not racially motivated, but that particular law had historical record showing that the legislators wanted to punish Blacks and not whites.

Without proving racial animus, it is unlikely that the Supreme Court will invalidate any of the state disenfranchisement laws. We are left with a problem, the solution is that legislative change must happen and those who are injured most by this law are obviously unable to use their civic rights to change it.

3. Gerrymandering Before the Supreme Court

In addition to laws that affect the act of voting, such as voter ID laws, which are largely introduced and supported by the Republican party,⁸⁷⁾ both Republican and Democrats have both used voting redistricting, or gerrymandering to gain advantage in elections.⁸⁸⁾ The Supreme Court has accepted to hear two cases this term (October 2017), that challenge legislative redistricting, one that alleges unconstitutional action by a Republican controlled government and one by a Democratic controlled government.⁸⁹⁾

Previously, in *Cooper v. Harris*, decided in May 2017, the Court upheld a district court decision that found that North Carolina's redistricting was unconstitutional as race was the predominant rationale in redesigning districts.⁹⁰⁾ Ironically, the use of race in gerrymandering in that case was

86) *Hunter v. Underwood*, 471 US 222 (1985).

87) Benjamin Highton, *Voter Identification Laws and Turnout in the United States*, Annual Review of Political Science, Vol. 20:149-167 (May 2017).

88) Editorial Board, *The Supreme Court Gets a Second Chance to Quash Gerrymandering*, WASH POST, December 14, 2017. Available at https://www.washingtonpost.com/opinions/the-supreme-court-gets-a-second-chance-to-quash-gerrymandering/2017/12/14/4d7580ca-dec5-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.d8c3e9eff980 (Accessed December 18, 2017).

89) *Id.*

90) *Cooper v. Harris*, 581 US ___, 136 S. Ct. 2512 (2017).

under the guise of compliance with the Voting Rights Act, this kind of racial gerrymandering was sometimes tolerated, as long as race was not the “overriding, predominant force.”⁹¹⁾ Justice Kagan, in *Cooper*, clarified that strict scrutiny must be used whenever race is their predominant districting criterion.⁹²⁾ As of this moment, partisan gerrymandering is not illegal, but racial gerrymandering is, if the state cannot provide that the law was made to accomplish a compelling government interest and that it is narrowly tailored to achieve that interest.

The cases currently before the court, *Gill v. Whitford*, from Wisconsin and *Benisek v. Lamone*, from Maryland both argue a violation of the first amendment, freedom of speech, rather than the use of race as a rationale for redistricting. Though they do not directly address the issue of race in these cases, this kind of partisan redistricting is not unrelated to racial based policies of the past and present, with lawmakers either trying to “crack”(to break up) or “pack” (to put more together) districts by manipulating them by easily ascertainable biographical information, such as race and ethnicity. These cases have the ability to either confirm the way that things have been done for years, or maintain the way we have structured our representative democracy, where whatever party is in control gets to redistrict and change the makeup of voters.

It was shown, after the 2016 elections that the partisan gerrymandering has benefitted the Republican party.⁹³⁾ The AP reviewed the outcomes of all 435 House races and approximately 4,700 state House and Assembly seats that were up for election in 2016 and found that there were four times as many states with Republican skewed state House or Assembly districts and in the most populated states, there were almost three times as many with

91) *Miller v. Johnson*, 515 US 900 (1995).

92) *Cooper* at 31.

93) David A. Lieb, *Analysis Indicates Partisan Gerrymandering has Benefitted GOP*, AP, June 25, 2017. Available at https://apnews.com/fa6478e10cda4e9cbd75380e705bd380/AP-analysis-shows-how-gerrymandering-benefited-GOP-in-2016?utm_campaign=SocialFlow&utm_source=Twitter&utm_medium=AP (Accessed December 17, 2017).

Republican tilted U.S. House districts. The AP concluded that Republicans won as many as 22 additional U.S. house seats over what would have been expected based on the average vote share.⁹⁴⁾

Though this seemingly is a partisan complaint, if the system is not reviewed and fixed, it could be used for either party and ultimately robs citizens of their right to all have an equal vote in who represents them in the government.

V. International Assistance with Strengthening Democracy

The right to vote has been identified as a fundamental right, both domestically and internationally. This right is part of both binding and nonbinding agreements and laws that the United States is a part of. As outlined in section II, there is historical precedent for peaceful and military intervention when those in power suppress the rights of the people.

It is unlikely, without external pressure, the current administration will consider the constitutional concerns of those who have been disenfranchised. In fact, there is ample evidence that more violations of international treaties protecting the right to vote will be committed. Obviously, Donald Trump and his administration are Republicans, who have historically supported and pushed this type of legislation. The current president is not known for being truthful and often has made up facts to justify his policy decisions⁹⁵⁾. For example, in May 2017, Trump created a “Voter Fraud” commission. This was following months of President Trump stating that between 3 to 5

94) *Id.*

95) Michelle Ye Hee Lee, Glenn Kessler and Meg Kelly, *President Trump has made 1,318 false or misleading claims over 263 days*, WASH POST, October 10, 2017 available at: https://www.washingtonpost.com/news/fact-checker/wp/2017/10/10/president-trump-has-made-1318-false-or-misleading-claims-over-263-days/?utm_term=.83595fcc2380 (Accessed November 10, 2017).

million unauthorized immigrants had voted in the election. This assertion, though it would support both the GOP's immigration policy and voter suppression, has been proven to be patently false.⁹⁶⁾ This is a warning sign that more voter restrictions will be proposed and misinformation will be spread regarding voter fraud.

1. OCSE Findings Regarding the 2016 Election

The U.S. government invited the OSCE to observe the November 8, 2016 general elections. The OSCE has made the following priority recommendations in regard to voting rights:

- To meet requirements regarding the equality of the vote, states should consider the establishment of independent redistricting commissions to draw district boundaries free from political interference. Such commissions should undertake broad public consultation and make recommendations on new boundaries well in advance of an election, allowing adequate time for any recourse to judicial review.
- In order to ensure the right and opportunity to vote for all citizens, particularly national minorities, Congress should give urgent consideration to establish the formula to identify jurisdictions to be subject to Section Five of the Voting Rights Act, in line with the ruling in *Shelby County v. Holder*.
- Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate. Rights should be restored when sentences have been completed, with the law clarified and communicated to those affected. Pre-trial detainees should be provided with the means to vote.

96) Amy Sherman, *Following Trump Voter Fraud Allegations, claiming that 5.7 million noncitizens voted is Wrong*, POLITIFACT, June 22, 2017 available at <http://www.politifact.com/florida/statements/2017/jun/22/ainsley-earhardt/following-trump-voter-fraud-allegations-claim-57-m/> (Accessed November 10, 2017).

- Citizens resident in the District of Columbia and the US overseas territories should be provided with full representation rights in Congress. In addition, the right to vote in presidential elections should be extended to citizens resident in the US overseas territories.
- Authorities should review existing measures to further reduce the number of unregistered voters, including addressing undue obstacles and burdensome procedures faced by marginalized sections of the population. Clear and accessible civic education programmes aimed at inclusive voter registration should be in place.
- States should refrain from introducing voter identification requirements that have or could have a discriminatory impact on voters. Consideration should be given to establishing federal standards for voter identification for both in-person and postal voting, to avoid possible discrimination and comply with the Voting Rights Act.⁹⁷⁾

This review of the U.S.'s election underscores the need for protection of the citizens of the United States.

VI. Conclusion

The United States has an active and powerful role in global democratization, using economic sanctions, diplomatic relationships and military intervention in the name of democracy and self-government. There is a large international community that has worked with the U.S. to ensure that minorities within other countries have political power against governments that have taken it away or have historically refused to give them that power.

97) OSCE Election Observation Mission Final Report, United States of America, General Elections, 8 November 2016, January 18, 2017.
<http://www.osce.org/odihr/elections/usa/294196?download=true>

It is clear, reviewing the history of slavery, Jim Crow laws, felon disenfranchisement and continued voter suppression that efforts made by those with power to suppress minority voters have been successfully implemented and have had a continual and lasting effect. It has also been shown that these restrictive laws, many which are facially neutral, have a disproportionate impact on minority voters. The right to vote is a fundamental human right and it has been denied for arbitrary and unfair reasons, disproportionately to communities of color.

Notwithstanding the history of ill intent, it is nonsensical that a country that is a member of so many international organizations that dedicate so many resources into helping support other democracies have fair and accessible voting opportunities, would continue to create a system that is allows laws that arbitrarily or systematically lessen the number of voters.

It is time that the global community recognizes and takes action in regards to the lack of legitimacy in this U.S. elections. The OSCE observations and finding are the first step in this process. It is my belief that the other international organizations that focus on free and fair elections also take note, observe and exert pressure on the U.S. to have free and fair elections and dispel the misinformation that the current administration has touted as fact. The right to vote is the most fundamental right, as without it, all other rights remain unchecked.

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[국문초록]

보통선거권에 대한 미신 - 미국에서의 투표 통제 -

에린 머피*

미국은 세계에서 가장 오래된 민주주의 국가 중 하나로서 그리고 기본권의 보호자로서 오랫동안 스스로를 옹호해 왔다. 민주주의의 핵심은 투표권이다. 역사적으로 소수자의 목소리에 대한 투표 통제는 연방 정부의 개입에 의해 조절된 전염병과 같았다. 이러한 연방 정부의 보호는 현 정부에 의해 더 이상 지지되지 않으며 행정부와 입법부에 대한 공화당의 통제 이전에도, 사법부는 역사적으로 통제적인 주들에서 투표법에 대한 연방 정부의 감독을 심각하게 훼손했다. 2013년에, *Shelby County v. Holder*와 함께, 1965년 투표권법의 핵심 조항이 위헌으로 간주되어, 주정부가 연방 정부의 감독 없이 투표법을 변경할 수 있는 권한을 가지게 되었다. 그들의 자체적인 제도에 맡겨졌을 때, 이러한 주들은 제한적인 투표법을 통해 조직적으로 소수자의 투표를 계속 통제해 왔다. 여기에 사용된 방법, 가령 유권자 신원확인 요구, 등록 기간 단축, 투표 시간 단축 및 사전 투표 통제 등은 남북전쟁 이후 재건기간에 특히 투표 통제에 사용되었던 노력들과 유사하다. 선거구를 게리맨더링하려는 당파적인 욕구와 특정 범죄의 유죄판결을 받은 사람들의 유권자 등록을 금지한 일부 주들을 결부시켜 생각하면, 이것은 연방과 지방 선거에서 다 같이 유권자의 투표율에 영향을 미친 투표 통제를 초래했다. 예를 들어, 엄격한 투표법이 통과된 이후 위스콘신에서는, 2008년과 2012년에는 2위를 기록했던 투표율이 2016년 선거에서 3.3 퍼센트 하락했다. 이런 조준된 통제는 피지배계층이 그들의 정부에 대해 통제력을 가지는 민주주의 개념과는 정반대의 것이다. 미국은 민주주의라는 명분으로 세계 여러 국가에 간섭해온 리더였기 때문에, 국제 사회는 기본권인 투표권을 조직적으로 박탈당하는 미국인들을 위하여 개입해야 할 권리와 의무가 있다.

주제어 : 유권자 억압, 선거권, 기본권, 인권, 선거법

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[Abstract]

THE MYTH OF UNIVERSAL SUFFRAGE
- Voting Suppression in the United States -

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The United States has long championed itself as a protector of fundamental rights and one of the longest standing democracies in the world. Core to democratic identity is the right to vote. Historically, voter suppression of minority voices has been a plague that has been tempered by federal intervention. This federal protection is no longer supported by the current administration and even before Republican control of both the executive and legislative branch, the judicial branch significantly crippled federal oversight of voting laws in historically suppressive states. In 2013, with *Shelby County v. Holder*, key provisions of the Voting Rights Act of 1965 were deemed unconstitutional, leaving states the ability to change voting laws without federal oversight. When left to their own devices, these states have continued to systematically suppress minority votes with restrictive voting laws. The tactics used, such as strict voter identification requirements, shortened registration periods, curbing early voting and shortening times at the polls are similar to efforts that have long been used to suppress minority votes, most notably in the reconstruction period after the Civil War. Coupled with a partisan drive to gerrymander voting districts and some states banning voter registration by those with certain criminal convictions this has resulted in voter suppression that has affected the voter turnout in federal and local elections alike. For example, in Wisconsin after strict voting laws were passed, voter turnout dropped 3.3 percent in the 2016 election, after ranking second in voter participation in 2008 and 2012. This targeted oppression is antithetical

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to the notion of a democracy, one in which those who are ruled have control over their government. As the United States has been a leader of global intervention in the name of democracy, the international community has a right and a duty to intervene on behalf of those in the United States who are being systematically denied their fundamental right to vote.

Key words : voter suppression, voting rights, fundamental rights, human rights, election law

