

## RESTORING THE VOTING RIGHTS ACT WILL NOT DO ENOUGH TO ENSURE FAIR ELECTIONS

*by Amel Ahmed, University of Massachusetts Amherst*

In June of 2013, the Supreme Court of the United States struck down sections of the 1965 Voting Rights Act that subjected certain states' voting laws to extra federal scrutiny. The original goal was to prevent states with a history of discriminating against minority voters from doing so again. Voting rights activists condemned the decision, arguing that that the Court had swept away necessary protections that helped to remove or prevent some of the most egregious violations. Already the state of Texas has implemented a problematic voter identification law that was struck down under the Voting Rights law just a year ago.

Although voting rights advocates are properly concerned, the Supreme Court decision was right about one thing: the 1965 list of states and localities deserving extra review has been rendered inadequate by changing facts on the ground. The best move forward would not be to restore the old list of states (or a slightly modified list) through limited Congressional action. Present-day challenges to equal voting rights are greater than that, and the responses must be more wide-ranging. Federal oversight to block discriminatory changes in voting rules should not just apply to a handful of states with a history of particular kinds of discrimination; it should apply to *all* states and a wider range of discriminatory practices.

### **Electoral Manipulations are Widespread – Especially Gerrymandering**

The key sections of the 1965 Voting Rights Act struck down by the Supreme Court in 2013 originally targeted those states with the most notorious records of systematic racial discrimination in voting. This may have been necessary at that time, but there were always two glaring problems. The original provisions for extra scrutiny overlooked, and in many ways validated, the considerable history of racial discrimination in other states. In addition, they provided little protection against other forms of voter discrimination. Federal oversight should not only prevent racial discrimination; it should also protect all Americans against the multitude of ways in which the rules of voting can be manipulated to undermine equal participation.

The United States has a long history of electoral manipulation, much of which is not race-specific. Foremost among the suspect manipulations is a device we know all too well – gerrymandering, the practice of carving out election districts that include voters likely to support certain interests, not others. In the existing U.S. system of districts where voters choose one representative per district, such gerrymandering is perhaps the most powerful tool elites can wield to manipulate electoral outcomes.

A lot of attention has recently been focused on so-called majority-minority districts, where a racial or ethnic minority group has the majority of voters. However, gerrymandering is not usually about race. It usually works to favor established political elites, who draw lines they

think will provide the votes to keep them in power. Ordinary citizens and associations working to protect voting rights usually have little access to the process of apportionment and redistricting, and they cannot easily get their hands on the vast amounts of data that are necessary to understand and competently engage reapportionment decisions. As a result, the design of districts tends to be almost exclusively in the hands of political party elites. Attempts to regulate gerrymandering are constantly frustrated because the appropriateness of district design can only be decided on a case-by-case basis.

## Beyond Gerrymandering

Gerrymandering is only one of many tools that have historically been used to manipulate electoral outcomes.

- At-large elections exaggerate the power of majorities, because a slate of candidates is elected all at once – and the slate that gets the most votes wins all the seats, even if it only narrowly edges out other slates. At-large elections leave minorities with little representation. Such elections have been prohibited in Congressional contests since 1842, but continue to be used widely at the state and local level.
- Various sorts of vote counting rules can tilt the playing field one way or another by influencing the sorts of resources candidates need to succeed. For instance, a system known as the “cumulative vote” has periodically gained support in the United States. This system uses multi-member districts and gives voters multiple votes. Because it allows voters to distribute their votes as they see fit – this system lets voters weigh their preferences. Although this would seem to give people more choice, it also requires a great deal of coordination among voters to successfully elect a candidate. Established political parties are usually the only organizations that can manage the necessary coordination, so these rules favor previously powerful groups. Cumulative voting was first introduced in Illinois legislative elections in 1869 for the purpose of impeding nascent worker parties. Because these parties did not yet have the material or organizational resources to achieve the necessary coordination, this simple change in voting rules succeeded in cutting off one of the most promising workers’ movements of the time. Cumulative voting remained in place in Illinois until the 1960s, and it is still used in some local election jurisdictions across the country.

## Toward Broader Protections

The federal oversight introduced by the Voting Rights Act of 1965 was intended to give extra protection against the most egregious racial violations. We now live in different times, but the power of electoral rules to shape political outcomes has not abated. Politicians have actually grown increasingly adept at gaming election laws. Continuing threats come from measures such as onerous voter identification rules, restrictions on voting days and hours and on the times and places citizens can register to vote – along with more sophisticated forms of gerrymandering.

As political scientist Giovanni Sartori aptly put it, voting rules are “the most specific manipulative instrument of politics.” Power holders can manipulate such rules to achieve outcomes not possible in open public debate or legislative votes. There are many possible ways to write and rewrite election rules to exclude or marginalize vulnerable groups. Federal oversight represents an important check on such manipulations – as long as U.S. laws give officials the full authority they need to counter never-ending efforts to undermine full and equal voting rights.