

# **A BRIEF HISTORY OF VOTER DISENFRANCHISEMENT LAWS IN THE U.S.**

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## **Abstract**

Following false claims of voter fraud during the 2020 presidential election, several conservative states sought to pass laws designed to limit voter fraud. However, these laws quite clearly restrict the electorate and disproportionately affect the political participation of minority, lower-class, and female voters. The trend of restricting voting rights in the U.S., whether implicitly or explicitly, is not new. Despite claiming to prioritize democratic participation, the U.S. has a history of laws that have limited eligible voters based on race, class, and gender. This is apparent through a close analysis of U.S. voting laws beginning with eligibility as determined by the Constitution and examining how that definition has been molded as the electorate slowly expanded to encompass African Americans and women following the Civil War and the Suffrage movement, respectively. Additionally, this warrants examining how this eligibility was enforced in practice. For example, African Americans were given the ability to vote following the passage of the 15<sup>th</sup> Amendment. However, voting was not a reality for many African Americans in the South who were unable to register, intimidated, and forced to comply with laws designed to keep them from voting all the way until the Voting Rights Act of 1965. Comparing the progression of voting laws to reality reveals a trend of disenfranchisement in the U.S. that can be directly connected to laws promulgated following the 2020 election.

## **Race**

African Americans have faced voter disenfranchisement since they were first included in the electorate in 1866. Prior to this, they had been excluded from voting entirely due to enslavement, meaning that at the start of the Civil War, 4.4 million enslaved African Americans living in the U.S. were unable to vote.<sup>1</sup> Following the war, Republicans in Congress passed the reconstruction amendments using the promise of allowing former Confederate states to rejoin the legislature to guarantee ratification.<sup>2</sup> This included the 15<sup>th</sup> amendment that granted the right to vote to formerly enslaved men; however, receiving the right to vote did not guarantee it in practice.

African Americans did see improvement during Reconstruction when the federal government used its powers to ensure Black voters would not be discriminated against so they could enjoy political participation and even hold public office. However, when Reconstruction ended, the Federal government withdrew its direct supervision of southern states by ending the Union Army's military occupation of the South.<sup>3</sup> As a result, Black people were quickly suppressed by the majority white population through laws that were directly aimed at restricting their ability to vote. For example, voting laws requiring literacy tests were deemed necessary by Southern states. This served to disproportionately affect the eligibility of Black voters, considering that many of them had previously been enslaved and, as a result, did not have access to the education needed to pass such a test.<sup>4</sup> These laws included legal

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<sup>1</sup> Aaron O, *United States: black and slave population 1790-1880*, Statista (Feb. 2, 2024), <https://www.statista.com/statistics/1010169/black-and-slave-population-us-1790-1880/>.

<sup>2</sup> *The Civil War: The Senate's Story*, United States Senate [https://www.senate.gov/artandhistory/history/common/generic/Civil\\_War\\_Admission\\_Readmission.htm](https://www.senate.gov/artandhistory/history/common/generic/Civil_War_Admission_Readmission.htm).

<sup>3</sup> Paru Shah & Robert S Smith, *Legacies of Segregation and Disenfranchisement: The Road From Plessy to Frank and Voter ID Laws in the United States*, 7 RSF: The Russell Sage Foundation Journal of the Social Sciences 136 (2021).

<sup>4</sup> *Id* 137.

loopholes as well to not disqualify illiterate white voters through the use of grandfather clauses. These clauses meant that if someone was illiterate, they could still vote if their grandfather was an eligible voter.<sup>5</sup> This clearly benefited less educated white voters while excluding Black voters who, because of enslavement, would have been the first generation of their family to receive suffrage.<sup>6</sup> These literacy tests and Grandfather clauses were not removed until a 1915 Supreme Court decision in *Guinn & Beal v. United States* that deemed they were in violation of the 15<sup>th</sup> Amendment.<sup>7</sup>

While these laws were removed, they nonetheless impacted several generations of African Americans who did not have access to full political participation and resulted in elections that were unrepresentative of their opinions. Even with the removal of the disenfranchisement laws mentioned, black voters faced “...state-sanctioned violence and terror—[that] sought to remove Black people from the political process, they also were part of the broader agenda of White supremacy to crush African American socioeconomic mobility.”<sup>8</sup> This mass voter intimidation in the South led to staggeringly low levels of voter registration by African Americans when compared to their white counterparts. This persisted into the mid-twentieth century as “...a mere 3 percent of voting-age black men and women in the South were registered to vote in 1940. In Mississippi, under 1 percent were registered” because of political violence by hate groups like the Ku

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<sup>5</sup> *Id* 137.

<sup>6</sup> *Id* 137.

<sup>7</sup> *Guinn & Beal v. United States*, 238 U.S. 347 (1915)

<sup>8</sup> Paru Shah & Robert S Smith, *Legacies of Segregation and Disenfranchisement: The Road From Plessy to Frank and Voter ID Laws in the United States*, 7 RSF: The Russell Sage Foundation Journal of the Social Sciences 136 (2021).

Klux Klan that made voting in practice nearly unachievable even in the absence of formal laws that were removed by *Guinn*.<sup>9</sup>

Furthermore, laws relating to the criminal justice system that took away voting rights for those who committed certain felonies remained in place.<sup>10</sup> Again, this disproportionality affected black voters who were overrepresented in crimes deemed deserving of disenfranchisement due to over-policing in black communities resulting in higher conviction rates.<sup>11</sup>

By the time these more obvious attempts at disenfranchising black voters were brought to an end by the implementation of the Voting Rights Act of 1965, African Americans had endured nearly a century of voter suppression through unjust laws and terror. However, this issue has still not been resolved due to more recent electoral laws, such as those passed following the 2020 election. These laws still unjustly impact Black voters, albeit in a less obvious way than the laws mentioned above. This discrete attempt at disenfranchisement has been achieved through “colorblind” laws, which at first glance do not appear to affect any particular group, but in practice, they serve a similar purpose as laws made after reconstruction.<sup>12</sup> For example, in *Crawford v. Marion County Election Board*, the Supreme Court upheld an Indiana law requiring all voters to present an ID.<sup>13</sup> At face value, this seems like a common-sense law created to limit voter fraud; however, by requiring ID, which minorities had at lower rates than their white counterparts, minorities were substantially more affected by the law and could be

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<sup>9</sup> *Race and Voting in the Segregated South*, <https://www.crf-usa.org/bill-of-rights-in-action/bria-12-2-b-race-and-voting-in-the-segregated-south>.

<sup>10</sup> Paru Shah & Robert S Smith, *Legacies of Segregation and Disenfranchisement: The Road From Plessy to Frank and Voter ID Laws in the United States*, 7 RSF: The Russell Sage Foundation Journal of the Social Sciences 137 (2021).

<sup>11</sup> *Id* 137.

<sup>12</sup> *Id* 139.

<sup>13</sup> *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008)

barred from voting despite being eligible.<sup>14</sup> Furthermore, Indiana’s interest in preventing fraud did not warrant these laws given the near “...complete absence of voter fraud throughout Indiana’s history.”<sup>15</sup> Additionally, *Crawford* provided precedent for conservative states to enact harmful voter ID laws following the 2020 election despite their discriminatory nature. By viewing the connection between laws following reconstruction until the Voting Rights Act of 1965 and those promulgated more recently, such as Voter ID laws, a pattern of racial disenfranchisement in the U.S. emerges. Furthermore, this trend must be considered when new electoral laws are suggested to avoid “colorblind” laws that are damaging American political participation.

### Class

Not only does the U.S. have a history of racial disenfranchisement, but it has also prioritized the voting rights of the elite, resulting in the suppression of lower-class voters. Historically, this was done through property qualifications and poll tax laws created to exclude lower-class citizens. Beginning with property qualifications, the constitution itself does not require ownership of property as a prerequisite to voting. However, Article One Section Two determines that for the election of representatives, “...the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”<sup>16</sup> This essentially meant that “...the qualifications for voting in U.S. House elections [were] the same as those for voting in the larger branch of the state legislature.”<sup>17</sup> Many states at this time

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<sup>14</sup> Paru Shah & Robert S Smith, *Legacies of Segregation and Disenfranchisement: The Road From Plessy to Frank and Voter ID Laws in the United States*, 7 RSF: The Russell Sage Foundation Journal of the Social Sciences 139 (2021).

<sup>15</sup> *Id.* 140.

<sup>16</sup> U.S. CONST. art. 1, § 2.

<sup>17</sup> *Article I, Section 2*, National Constitution Center <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/762>.

required that citizens own property to be eligible voters, so by merging voter eligibility for federal elections with state requirements, the framers made it such that the majority of people were precluded from voting. These remained in place at the discretion of the states. While they were eventually removed, states like South Carolina and Rhode Island still had some form of property qualification into the early 1860s.<sup>18</sup> This created a white elite, male-focused political climate throughout the United States' first century.

Voter disenfranchisement laws aimed at the poor did not end at property qualifications. Instead, they took the form of poll taxes that citizens were legally required to pay if they wished to vote. These remained in place much longer than property qualifications, with them only being removed from federal elections by the 24<sup>th</sup> Amendment in 1964.<sup>19</sup> *Harper v. Virginia Board of Elections* subsequently removed them from state elections as well for violating the equal protection clause of the 14<sup>th</sup> Amendment.<sup>20</sup> The use of poll taxes where property qualifications ended represents yet another century of voter suppression targeted at lower classes. Furthermore, this issue impacted African Americans particularly hard as well due to racial income inequality, which illustrates how American patterns of disenfranchisement laws between both race and class are interconnected.

Just like recent electoral laws that have been shown to suppress the votes of minorities, these same laws limit the voting capabilities of the lower class while ensuring the participation of the wealthy. For example, lower-class voters have less access to information and education explaining changes in electoral laws, making it more likely

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<sup>18</sup> Charles Oscar Paullin & John Kirtland Wright, *Property qualifications for suffrage, 1860*, Norman B. Leventhal Map Center  
<https://collections.leventhalmap.org/search/commonwealth:q524n3185>.

<sup>19</sup> U.S. CONST. amend. XXIV, § 1.

<sup>20</sup> *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

that they will be uninformed on election day and not have their votes counted.<sup>21</sup> Additionally, many of these changes directly impact the eligibility of lower-class voters. Following the 2020 presidential election, Florida has promulgated laws severely limiting when ballot drop boxes are available to voters.<sup>22</sup> This will hit the lower class especially hard since many “shift-workers and other voters who relied on early morning and nighttime hours to submit their ballots will no longer be able to do so.”<sup>23</sup> Furthermore, poor voters may be unable to comfortably take time off of work in order to stand in line to vote. Similarly, restrictions on mail-in and early voting limit poor voters to in-person voting that many of them cannot attend. Florida has also made it such that former felons with outstanding court debt cannot vote, which most impacts those with financial constraints.<sup>24</sup> Similar to racial voter disenfranchisement, there is a clear pattern between old and new attempts to deem voters ineligible based on wealth.

## Gender

Women represent another group that historically faced limitations on their right to vote. Similar to property classifications that barred non-elites from voting, women were also excluded due to the state-defined eligibility of voters granted by Article One Section Two.<sup>25</sup> By leaving this issue to the states, women were deemed completely ineligible from voting for nearly a century until Wyoming became the first to

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<sup>21</sup> A.K Friedman, *Voter Disenfranchisement and Policy Toward Election Reforms*, 22 Review of Policy Research 806 (2005).

<sup>22</sup> Fla. Stat. § 101.657(1)(d).

<sup>23</sup> *How New State Voting Laws Could Impact Voters*, Brennan Center for Justice (Sept. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/how-new-state-voting-laws-could-impact-voters>.

<sup>24</sup> Fla. Const. amend. VI, § 4.

<sup>25</sup> U.S. CONST. art. 1, § 2.

enfranchise women in 1869.<sup>26</sup> However, this proved to be the exception, not the rule, as some other Western states did enfranchise women, but this was not guaranteed in every state until the passage of the 19th Amendment in 1919.<sup>27</sup>

Despite the voting rights of women being enshrined in law since 1919, they have still encountered laws aimed at disenfranchising them, many of which are connected to other forms of disenfranchisement mentioned above. For example, despite receiving the vote in 1919, African American women, like African American men, could hardly vote in practice because of literacy tests, grandfather clauses, intimidation, state-supported violence, etc., until the passage of the Voting Rights Act of 1965. Similarly, poor white women in states that instituted poll taxes would have had difficulty voting as well until *Harper* removed poll taxes from state elections.<sup>28</sup> This illustrates how patterns of voter disenfranchisement in the U.S. are not only real, but they have historically served to impact some groups, such as African American women and poor white women, twice as harshly due to the intersectionality of their identities.

Furthermore, like minorities and the poor, women have been subject to disenfranchisement and political inequality recently as well. In that, “the number of women voting has been greater than men in all presidential elections since 1964.”<sup>29</sup> Despite this, women only make up a quarter of Congress, a disparity that indicates how receiving the vote

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<sup>26</sup> Holly J McCammon & Karen E Campbell, *Winning the Vote in the West: The Political Successes of the Women's Suffrage Movements, 1866-1919*, 15 *Gender & Society* 55 (2001).

<sup>27</sup> *Id.*

<sup>28</sup> *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

<sup>29</sup> Amber Maltbie et al., *Gender Parity in Election Laws: Past, Present, and Future*, American Bar Association (Oct. 24, 2002), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/economics-of-voting/gender-parity-in-election-laws/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economics-of-voting/gender-parity-in-election-laws/).



has failed to translate into equality in public office.<sup>30</sup> The American Bar Association has suggested that this is due to a patriarchal political culture that has been unwelcoming to women.<sup>31</sup> For example, only in 2018 did the Federal Election Commission begin to consider childcare a valid campaign expense and not a personal expense, meaning that until recently, many women acting as caregivers would have faced challenges in running for office.<sup>32</sup> The election laws promulgated after the 2020 election only serves to reinforce constraints on women's political participation by limiting the hours polls are available and the accessibility of mail-in voting. Similar to campaign finance rules, by limiting the availability of voting many women who act as primary caregivers for either children or relatives will be unable to find time to vote within the legal window. Even more importantly, the American Bar Association explains how women have endured a "...pervasive culture of sexual harassment in politics," making them feel disrespected, exploited, and less enthusiastic about participating.<sup>33</sup> The compounding effects of campaign finance laws, electoral laws, and sexual harassment contextualize how women's traditionally higher rates of voting than men does not mean that attempts to disenfranchise and discriminate against them are not real.

## Conclusion

The U.S. has presented a historical pattern of promulgating laws aimed at disenfranchising voters based on race, class, and gender. For African Americans, this took the form of laws directly aimed at barring them from political participation, such as grandfather clauses, paired with intimidation that ensured Black people could not reliably or safely vote until the Voting Rights Act. Similarly, lower-class voters also faced

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

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Undergraduate Law Journal

restrictions on their eligibility based on property qualifications and later poll taxes. Lastly, women were historically disenfranchised by being completely excluded from voting and then further had their rights limited based on race or class. These instances reveal that elite white men were the only group never to have their right to vote restricted. Furthermore, even with the removal of the laws mentioned above, those proposed in recent years to institute voter ID and limit alternative methods of voting severely restrict the electorate, especially minority, lower-class, and female voters. To combat these voting inequalities Americans must be more mindful of their own history with disenfranchisement and critically think about electoral laws to mutually protect one another's political participation from diminishment.