Chapter 11

The Right to Vote

We cannot imagine a modern democracy without adult citizens having the right to vote freely. It is a basic right of citizenship in a democratic society. Yet nowhere in the Constitution is the right to vote granted explicitly. At a time when even dictatorial governments formally (and fraudulently) hold elections, it seems remarkable that the world's leading democracy does not mention the right to vote in the main body of its most important document.

The creation of a federal system that divided power between state and central governments explains this strange omission. The framers left it to states to determine qualifications of voters in state and national elections, which at the time meant that only white men who owned property could vote. This limitation proved unacceptable, and beginning in the nineteenth century, states gradually opened the door to widespread participation in elections. By the 1970s, changes in voter qualifications opened the ballot to nearly all adult citizens.

Today, we tend to think of new rights as results of Supreme Court decisions. We often forget that rights also stem from political action and constitutional amendment. The extension of the right to vote to all adult citizens falls into this latter category. Property restrictions disappeared in the 1820s and 1830s when, under political pressure, new state constitutions extended the right to vote—also called suffrage and the franchise—to free white males older than twenty-one. Changes to the federal constitution occurred after the Civil War. The Fifteenth Amendment (1870) prohibited states from denying the right to vote on account of "race, color, or previous condition of servitude." The Nineteenth Amendment (1920) enfranchised women. The Twenty-fourth Amendment (1964) banned poll taxes meant to discourage blacks from voting in federal elections. The Twenty-sixth Amendment (1971) lowered the voting age to eighteen. Collectively, the voting amendments represent the greatest addition of rights to the Constitution since the Bill of Rights was adopted in 1791.

Few of these changes came easily. Opponents were fearful that new voters would threaten their political power or challenge the values they prized. In each instance a shift in social attitudes preceded the adoption of the amendment and made it possible. Many of the major expansions of the franchise have also occurred during or in the aftermath of wars because it was difficult to ask people to bear the demands of war while denying them the vote. But even when most people agreed the time had come to extend the franchise, stiff opposition remained, making it difficult to claim victory, as illustrated by the final act—the so-called War of the Roses—in the long battle to enact the Nineteenth Amendment.

August 1920 was hot and muggy in Nashville, Tennessee. Normally, it was a month when residents left the capital city for the highlands of Kentucky or the Smoky Mountains to the east. But this August was not typical. The Tennessee legislature was in session to ratify the Nineteenth Amendment and extend the vote to women. Thirty-five states had passed it, one short of the three-fourths of states required for its adoption. Yet suffragists, supporters of the amendment,

were uneasy. Connecticut, the state they had counted on for victory, suddenly appeared unlikely to ratify the amendment. Now they had to fight the battle in the conservative, unsympathetic South. A defeat in Tennessee, they feared, might kill the amendment.

The town was thick with celebrities and reporters from around the nation. Carrie Chapman Catt, head of the National Woman Suffrage Association, had arrived from New York two months earlier to team with prominent Tennessee women to organize rallies and letter-writing campaigns, enlisting support from women of urban and rural backgrounds, different social classes, and different races. To demonstrate their unity, the pro-amendment forces adopted the yellow rose as a symbol. In response, opponents chose the red rose. The ensuing campaign became known, naturally, as the War of the Roses, recalling the fifteenth-century civil war among the nobility in England.

Initially, legislators appeared to favor passage, but they soon began to waver under relentless pressure from opponents of the amendment. Suffragists feared the worst, even after the Tennessee senate voted overwhelmingly to ratify. The state's lower house appeared to be leaning the other way. Legislators wore either yellow roses or red roses to signal their position on the vote, and a simple count of roses, 49 red and 47 yellow, forecast defeat for the amendment. "We are up to the last half of the last state," Catt wrote, "[and] opposition of every sort is fighting with no scruple. . . . [They] are appealing to Negrophobia and every other cave man's prejudice. . . . It's hot,muggy, nasty, and this last battle is desperate. . . . We are low in our minds. . . . Even if we win, we who are here will never remember it but with a shudder."

The road to ratification that was reaching its climactic moment in Tennessee had begun in 1848 in New York State at the Seneca Falls Women's Rights Convention. The Declaration of Rights of Women, the document produced by the convention, contained the first serious proposal that women be allowed to vote. Twenty years later, in 1868, a woman suffrage amendment was first introduced, unsuccessfully, in Congress. In the 1870s, suffragists tried again, this time proposing the so-called Anthony amendment, named for Susan B. Anthony, the century's leading campaigner for women's rights, and modeled after the Fifteenth Amendment, which forbade states from denying the right to vote based on race or color. (Even though that amendment does not refer to gender, in effect it applied to men only.) The Anthony amendment provided that "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," words that became the language of the Nineteenth Amendment forty-two years later.

"But to have drunkards, idiots, horse-racing, rum-selling rowdies, ignorant foreigners, and silly boys fully recognized, while we ourselves are thrust out from all the rights that belong to citizens, it is too grossly insulting to the dignity of woman to be longer quietly submitted to. The right is ours. Have it, we must. Use it, we will. The pens, the tongues, the fortunes, the indomitable wills of many women are already pledged to secure this right."

—Elizabeth Cady Stanton, speech,Waterloo, New York (1848)

Stymied in their attempts to get a constitutional amendment passed by Congress in the 1860s and 1870s, suffragists resorted to the courts, with no success. In what was termed the "new departure," they looked to the Fourteenth Amendment's language that all persons born in the United States are citizens who enjoy the privileges and immunities of citizenship. Voting was one of those privileges, they argued. But the Supreme Court did not agree, rejecting the attempt of a reformer, Virginia Minor, to register to vote in Missouri. Advocates of women's right to vote were more successful in persuading some states, especially western states, to grant the franchise to women. Other suffragists, tired of the slow progress, began using more radical tactics: picketing the White House, staging large marches and demonstrations, and going to jail. During World War I, women played important roles in the war effort, and they used their new influence to pressure the President and Congress for a reward of political equality. Their tactics paid off. In 1918, President Woodrow Wilson asked Congress to submit the Nineteenth Amendment to the states, which it did in 1919.

All the arguments advanced in Tennessee for and against the amendment had been part of the national debate for decades. Supporters focused on two themes—equality and responsibility.Women were citizens, and the American ideals of citizenship, as expressed in the Declaration of Independence and reinforced in the Fourteenth Amendment, required equal treatment under law. The Fifteenth Amendment had extended the vote to previously excluded African Americans, so women, too, were due this right. Unfortunately, this argument sometimes was accompanied by the ugly claim of white women's superiority over black men as potential voters.Women also pointed to their contributions to the nation's economy; increasingly they worked in factories and had begun to enter the professions. Even so, women were denied opportunities to fulfill their civic obligation. They could not serve on juries, for instance, because jurors were chosen from voting rolls, an exclusion that denied women defendants the right to be tried by their peers.

Opponents of female suffrage focused attention on what they claimed would threaten the family. A woman's place was in the home; it was her separate sphere, a world of motherhood and domesticity where she exerted a naturally superior moral influence. Placing women in the nasty arena of partisan politics would sully them, dragging them to the level of the men who were less refined morally and ethically. Ironically, many feminists accepted the notion that women played a superior domestic role, but they argued in rebuttal that by voting women would uplift the nation's political and moral tone.

The critical Tennessee vote on the amendment came in the state's house of representatives on August 18. Supporters were two votes shy of passage, but a legislator abandoned his hospital bed to close the gap to one vote. Then, unexpectedly, an opponent switched sides, leaving the legislature deadlocked. A second vote on the amendment produced another tie. Tensions mounted as each side lobbied furiously to change legislators' minds. Suddenly, on the third roll call, the youngest member of the legislature, twenty-four-year-old Harry Burns, whose district opposed the amendment, dramatically announced his support. In his pocket was a telegram from his mother, a staunch suffragist, who urged him to vote yes, writing, "I have been watching to see how you stood, but have noticed nothing yet. Be a good boy and help Mrs. Catt put 'Rat' in Ratification." Joined by another member who also changed his vote, the amendment passed, 49 to 47.

"The vote. . . is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."

—President Lyndon B. Johnson, upon signing the Voting Rights Act of 1965

With the certification of Tennessee's decision, the Nineteenth Amendment—and a new right—became part of the Constitution. Only one delegate from the Seneca Falls convention was still alive when the amendment passed. Charlotte Woodward had been nineteen years old in 1848. When finally eligible to cast her first ballot, she was ninety-one. It had taken a lifetime for women to achieve the right to vote.

The Nineteenth, Twenty-fourth, and Twenty-sixth Amendments contain clear directives and have required little or no judicial interpretation. The Fifteenth Amendment is in a class by itself, even though it, too, contained a similar directive extending the vote to black citizens. This new constitutional protection did not guarantee access to the polls as many states, especially in the South, found other ways to discourage black men, and then women, from exercising their rights. Literacy tests, poll taxes, and intimidation were just some of the obstacles African Americans had to overcome. White voting registrars, for instance, required potential black voters to read and explain complex constitutional texts and then denied the vote even when the applicant demonstrated his knowledge.White men were given a pass under so-called "grandfather" clauses that allowed them to register if their ancestors had voted. Not until the 1960s were most of these barriers removed by law.

Today, the franchise is nearly universal in the United States. Only juveniles, aliens (foreign-born residents who are not yet citizens), convicted felons, and insane persons cannot vote in most states. Not all questions related to voting are settled, however. In Georgia, for example, all counties, regardless of size, had a single representative in the legislature. A series of cases in the 1960s addressed these problems when the Supreme Court adopted what is known as the "one man, one vote" principle to judge how fairly state legislatures created voting districts, based on the Fourteenth Amendment's requirement of equal protection of the laws for different groups of people. These decisions corrected some gross inequities, but they raised other questions. In redrawing districts, for example, could legislatures create predominately black or Latino districts for the purpose of ensuring the election of minority officeholders? The underlying question was an important one—is voting an individual right or a group right? These issues are still being debated, although Americans remain true to the tradition that legislators represent individual voters, not groups. Also unsettled is how far political parties may go to redraw voting districts to make it more likely their candidates will win—and whether these districts can be redrawn at times other than the years immediately following a census conducted every decade.

A more significant modern problem is the number of eligible voters who choose not to exercise their right. Many people fail to register, even though recent laws allow registration by mail or when applying for governmental services, including a driver's license. Only about half of all registered voters participate in the national election for President, and even fewer people vote in other elections. This low turnout places the United States near the bottom of all Western democracies. The group that votes least is eighteen- to twenty-four year-olds, thereby giving young adults less influence over government policy even though, as the largest group in the military, they are the citizens whose lives are most at risk from political decisions.

What difference does voting make—and more important, what is its relationship to other individual rights? Each vote counts, sometimes in ways unimagined when they are cast. The Presidential election of 2000, for example,

was one of the closest contests in U.S. history. Less than three hundred votes separated winner from loser in Florida, the state whose electoral votes tipped the election to George W. Bush. But what difference does voting make to our individual rights under the Constitution? The most direct relationship comes in the laws passed by Congress and the various state legislatures.We elect the senators and representatives who pass measures that may extend or limit our rights. We also vote for the President and governors who administer and enforce these statutes. The selection of federal and state judges has a less direct but equally important relationship with voting. The U.S. Senate, elected by popular vote, approves the President's appointments for federal judgeships. These judges interpret our constitutional guarantees, which is why the confirmation of Supreme Court nominees attracts such attention.

Voting is a fundamental right—and a responsibility—of citizens in a democracy. It is, in fact, a right that gives special meaning to the First Amendment rights of freedom of speech, press, and assembly that we deem essential for our liberty. These rights and the right to vote are required for a government "of the people, by the people, for the people," in Abraham Lincoln's words. One of the original contributions made by the founding generation, a generation raised in a world of monarchies, was the theory of popular sovereignty, where power resides in the people and not the government. Our constitution expresses this concept in its opening phrase, "We the People." When we exercise our right to vote, we affirm the value of this revolutionary ideal and, in the process, revitalize our democracy.

Are All Citizens Necessarily Voters?

Virginia Minor of Missouri was the first person to take the cause of women's right to vote to the U.S. Supreme Court. In 1869, she developed an argument called the "New Departure" in which she claimed that women already had the right to vote as a consequence of the adoption of the Fourteenth Amendment and its citizenship clause. Women were citizens of the United States, she claimed, and were entitled to all the "privileges and immunities" of citizens, as protected by the amendment. One of these privileges was the right to vote.When she tried to register to vote in Missouri, however, the county election judge, Reese Happersett, refused to enroll her on the list of eligible voters. In 1875, a unanimous U.S. Supreme Court rejected her appeal. It reasoned that because a person could be a citizen without being a voter, therefore voting was not a privilege or right of citizenship protected by the Fourteenth Amendment. Chief Justice Morrison R.Waite wrote the opinion in Minor v. Happersett.

The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitutional and laws of that State, which confine the right of suffrage to men alone. . . .

The direct question is. . . whether all citizens are necessarily voters.

The [fourteenth] amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. . . .It is clear. . . that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. But if it was not, the contrary may with propriety be assumed.

[A]ll the citizens of the States were not invested with the right of suffrage. In all, save perhaps New Jersey, this right was only bestowed upon men and not upon all of them. . . .

Women were excluded from suffrage in nearly all States by the express provision of their constitutions and laws. . . .

But we need not particularize further. No new State has ever been admitted to the Union which has conferred the right of suffrage upon women, and this have never been considered a valid objection to her admission. On the contrary. . . the right of suffrage was withdrawn from women as early as 1807 in the State of New Jersey, without any attempt to obtain the interference of the United States to prevent it. Since then the governments of the insurgent States have been reorganized under a requirement that be fore their representatives could be admitted to seats in Congress they must have adopted new constitutions, republican in form. In no one of these constitutions was suffrage conferred upon women, and yet the States have all been restored to their original position as States in the Union.

Certainly, if the courts can consider any question settled, this is one. For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. . . . Our province here is to decide what the law is, not to declare what it should be.

We have given this case the careful consideration its importance demands. If the law is wrong, it ought to be changed; but the power for that is not with us.

"No Person Shall Be Kept from Voting Because of His Race"

Prior to the passage of the Voting Rights Act in 1965, the federal government responded to claims of racial discrimination in voting in the South on a case-by-case basis. The civil rights march from Selma to Birmingham, Alabama, in March 1965 dramatized the injustices and brutality inflicted on blacks who sought to vote. The use of police dogs and fire hoses to stop the marchers and the murders of several civil rights workers led to public outrage and a decision by Lyndon Johnson's administration to seek a national voting rights act. President Johnson outlined his reasons for the request in a nationally televised speech (below) to a joint session of Congress while the Selma march was still in progress. The act passed quickly. In 2006, the act was extended for another twenty-five years.

Our fathers believed that if this noble view of the rights of man was to flourish, it must be rooted in democracy. The most basic right of all was the right to choose your own leaders. The history of this country, in large measure, is the history of the expansion of that right to all of our people.

Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.

Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes.

Every device of which human ingenuity is capable has been used to deny this right. The Negro citizen may go to register only to be told that the day is wrong, or the hour is late, or the official in charge is absent. And if he persists, and if he manages to present himself to the registrar, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on the application.

And if he manages to fill out an application he is given a test. The registrar is the sole judge of whether he passes this test. He may be asked to recite the entire Constitution, or explain the most complex provisions of State law. And even a college degree cannot be used to prove that he can read and write. For the fact is that the only way to pass these barriers is to show a white skin.

Experience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books—and I have helped to put three of them there—can ensure the right to vote when local officials are determined to deny it.

In such a case our duty must be clear to all of us. The Constitution says that no person shall be kept from voting because of his race or his color.We have all sworn an oath before God to support and to defend that Constitution. We must now act in obedience to that oath.