

Judge John Pickard

Litchfield Law Day Remarks May 1, 2014

For my remarks today I am going to ask you to use your imaginations and pretend that we could go back in time, all the way back to January 7, 1789. Today, for the first time, our new country is voting to elect our first president. If we were all together at that time, how many of us could vote in the election? I ask this question to have us think about the changes that have taken place in the way that Americans view the right to vote, and to make the point that the right to vote has only recently become a basic value which can be enforced by the courts.

Going back to 1789 we know that none of the women here would be able to vote, nor would anyone who is not white as that term was used at that time, nor would anyone between the ages of 18 and 21. Less well known is that no one who did not own real property or substantial personal property could be a voter. These restrictions on voting existed in Colonial days and were carried forward in Connecticut after independence.

There is a tendency for all of us to take our right to vote for granted, and to fail to reflect on the long and difficult history of the expansion of the right to vote to its present extent. This is a huge topic and I will only be skimming the surface in my brief remarks here today.

It is important to remember that the United States Constitution does not contain an explicit guarantee of the right to vote. Nor does it establish the qualifications for voting. That was left as a state function. The founders feared broad suffrage as we now think of it. John Adams, our second president, reflected that fear when he wrote in 1776 that no good could come from broad suffrage. He said:

“Depend upon it, Sir, it is dangerous to open so fruitful a source of controversy and altercations as would be opened by attempting to alter the qualifications of voters; there will be no end to it. New claims will arise; women will demand the vote; lads from 12 to 21 will think their rights not enough attended to; and every man who has not a farthing, will demand an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions, and prostrate all ranks to one common level.”

These sentiments were common enough that in Connecticut, as in the other states, the right to vote was

very limited. Connecticut followed the other newly independent states in excluding from voting women, people of color and those who did not own property.

Not surprisingly, there was pressure to expand suffrage in Connecticut and elsewhere, particularly with respect to the requirement that a voter be a property owner. Former soldiers in the Revolutionary army and others who paid taxes but didn't own property were not shy about expressing their opinion that they deserved to participate in electing their leaders. But, the expansion of suffrage was a political issue for each state to decide for itself. The courts had no role to play. The major roadblocks to wider suffrage took incredible time and effort to overcome through political means. The notion that voters should own property was the first major hurdle to be attacked. This requirement had never had universal acceptance in America. Benjamin Franklin's view, contrary to that of John Adams, is expressed as follows:

“Today a man owns a jackass worth 50 dollars and he is entitled to vote; but before the next election the jackass dies. The man in the mean time has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers. But, the jackass is dead, and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?”

In Connecticut, the state's first constitution adopted in 1818, went at least part-way in loosening the property restriction. Under this new constitution, a white male of at least 21 years of age was eligible to vote provided he owned real estate with a value of at least seven dollars. But, if not, he could also vote if he had completed at least one year of military service or had paid a state tax within the last year. This liberalization in the property restriction was off-set, in part, by two new restrictions which were added as part of a political compromise. First, the 1818 Constitution contained a strict residency requirement of six months and, second, there was a requirement that the voter be of good moral character. So, the state expanded suffrage with one hand and contracted it with the other.

During the 1830's Jacksonian democracy swept through much of the country, and demands for wider suffrage grew louder. But, in Connecticut it wasn't until 1845 that the constitution was amended to eliminate the requirement of property ownership or tax payment, thereby opening suffrage to a wider field of white males.

However, as part of what must have been another compromise, the residency requirement was increased to one year.

Progress toward wider suffrage did not continue, but actually took a step backwards in an 1855 amendment to the constitution to add a literacy requirement for voters. A voter had to be able to read an article of the constitution or any section of the statutes. This amendment was probably an attempt to limit the voting power of immigrants, especially from Ireland, who were coming to Connecticut in large numbers. Again, at that time suffrage was purely a political issue and the courts had no role to play. The strict residency requirement remained as did the limitation to white males. The land of steady habits was proving true to its name.

No more changes were made in the development of voting rights until after the Civil War. As we know, in 1870 the 15th amendment to the US Constitution was ratified providing 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 race, color or previous condition of servitude. Connecticut finally followed suit in 1876 by removing the word “white” from the qualifications of voters. So, by 1876 voting in Connecticut was still limited to men only but the legal restriction involving property ownership had been eliminated as had the requirement that male voters be white. However, the southern states began the shameful period of segregation and Jim Crow, part of which involved systematically denying the former slaves and their descendants the newly guaranteed right to vote by various methods including the poll tax and literacy tests which were administered to prospective black voters but waived for illiterate prospective white voters by virtue of the “grandfather clause.”

This dishonorable history is well-known, but how many of us know that right here in the Nutmeg state in 1897 the Connecticut constitution was again amended to bolster the literacy test to provide that prospective voters must be able to read, in English, an article of the Constitution or any section of the statutes. It is fair to infer that this amendment was aimed at a new wave of immigrants who were from southern Europe, primarily Italy, and, unlike the Irish of the 1850's, did not speak English. Clearly, the established political leadership was concerned that broad suffrage would threaten their positions of power.

The 20th century saw the most dramatic changes in voter rights. First, after many years of political

action and public education women won the right to vote in 1920 by virtue of the 19th amendment to the US constitution. That amendment applies to state as well as federal elections. With that one amendment the pool of potential voters in the US doubled. Today, it is hard for us to imagine a time, less than 100 years ago, that women were unable to vote.

The rights of the poor and people of color were enhanced in 1962 with the 24th amendment to the US Constitution which eliminated the use of the poll tax in federal elections as a restriction on voting. Poll taxes in state elections were later declared to be unconstitutional in 1966. But, it was the 1965 Voting Rights Act which cleared the way for African Americans and other minorities to gain the full right to vote. Among many other things, the Act outlaws literacy tests and similar devices historically used to disenfranchise minorities. Then, in 1971, the pool of potential voters was further expanded with the enactment of the 26th amendment to the US constitution lowering the voting age to 18 in all elections.

The Federal Courts became more active in the 1960's in extending voting rights by deciding that the right to vote is guaranteed by the due process and equal protections clauses of the 14th Amendment. Lengthy residency requirements, including Connecticut's one year requirement, were declared to violate the 14th Amendment by virtue of the a US Supreme Court decision in 1972. Among the many decisions involving interpretation of the Voting Rights Act, Connecticut's literacy test and good moral character requirement have been held to be in violation of the Act's prohibition of voter qualification tests. These requirements have since been removed from the Connecticut constitution.

As we know, last year the US Supreme Court declared unconstitutional portions of the Voting Rights Act which required states in the south to obtain pre-clearance for changes in their voting laws. Only time will tell whether this action has any affect on minority voting. The same can be said about other high publicity efforts in many states to enact tougher voter identification standards, to eliminate same-day registration, to shorten the time for early voting and to limit absentee voting. These actions by states to exercise their power regarding voting will be carefully scrutinized by the courts, unlike earlier days when the states had absolute control over this issue.

This brief tour through the history of suffrage leaves me with one undeniable impression. Our country

began with the belief that voting should be left to men who came from the landed class, who would have the wisdom to decide political matters for the majority of citizens who could not vote. Through a process that has lasted over 200 years, our convictions about voting are quite different. We now believe that we have the right to vote simply by virtue of the fact that we are United States citizens. There are no other tests that we must pass. I believe that this history of the development of the right to vote is an example of the theme of this year's law day: American Democracy and the Rule of Law: Why Every Vote Counts. Now, we can proudly say that every American has the right to vote and that the rule of law will protect that right.