

ELECTORAL ISSUES: INDIVIDUAL VOTER RIGHTS & OUTSIDE INFLUENCE ON ELECTIONS

Position Statement

NASW, Iowa Chapter, affirms the protection and enforcement of individual suffrage rights, particularly for those who have less political power or those who experience social vulnerabilities (minorities, women, the elderly, low income individuals and those with disabilities). NASW, Iowa Chapter, promotes the role of individual voters and supports limits on outside influence in the political process.

Background

- *Individual Voter Rights*

Voting is a fundamental right. It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which we all must live. The right to vote is found at the heart of representative government and ensures the “preservation of other basic civil and political rights” (Chiodo v. Section 43.24 Panel, 2014). Significant events in U.S. history have challenged suffrage for women and minorities. In 1870, the 15th Amendment granted black men the right to vote. In 1920, the 19th Amendment granted women the right to vote. Subsequent court decisions permitted southern states to rewrite their constitutions to exclude blacks from voting through devices such as literacy tests, good character tests, and poll taxes (Davidson, 1994). Throughout the 19th and 20th centuries, these practices remained a pervasive method of threatening minorities from exercising their voting rights. Such practices evolved into institutionalized voter discrimination designed to disfranchise minority voices. The passage of the 1965 Voting Rights Act “ensured that no federal, state, or local government may in any way impede people from registering to vote or voting because of their race or ethnicity” (National Association for the Advancement of Colored People, 2013). Lyndon B. Johnson called the Voting Rights Act “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” (Garrow, 1990, p. 377).

Despite these important political achievements, “in the 1980’s, people living in poverty, those with less education, and people of color remained overrepresented among U.S. citizens who did not vote” (Humphreys, 2011, p.346). To confront this widespread disfranchisement, voter registration was promoted through educational efforts (Humphreys, 2011). The National Voter Registration Act of 1993 (NVRA), sometimes called the “Motor Voter” law, encouraged greater registration rates by requiring states to offer voter registration in specific forums and formats, such as when obtaining a driver’s license, when applying for public assistance, or through the mail (United States Department of Justice [USDOJ], n.d.). The NVRA also established standardized requirements regarding how states maintain their voter registration lists, in order to improve the integrity of these records and to provide better clarity to voters. For example, states must notify registrants if their applications are accepted or not, and they must update registration lists to reflect when voters relocate to new districts (USDOJ, n.d.).

The Help America Vote Act (HAVA) of 2002 was created in response to the 2000 presidential election where the use of outdated voting machines produced questionable results. HAVA was implemented to streamline the voting system by mandating changes in election practices to protect voters and the democratic process (Williams, n.d.). HAVA authorized federal funding of new voting amenities, including machines accessible to those with disabilities and ballots in multiple languages. HAVA requires simple and accessible voting information to be posted at all polling sites. HAVA also created the provisional ballot, allowing such ballots to be cast by individuals who believe they are eligible to vote but whose eligibility cannot be immediately confirmed at the polling site (Williams, n.d.).

The Voting Rights Act was revisited in the *Shelby County v. Holder* Supreme Court decision of June 2013, which invalidated a section of the law that dictated which regions of the country must receive USDOJ

approval before making changes to their voting laws (Fuller, 2014). The Supreme Court ruled that the formulas were outdated, so unless Congress passes new legislation, areas of the country with histories of discriminatory voting practices may enact new restrictions. Since the ruling, state legislatures have been active in passing new election laws, with a mix of those that may encourage voting--such as online voter registration--and those that may discourage voting--such as voter ID requirements (Fuller, 2014). The Brennan Center for Justice (2014) documented challenges faced by voters in the 2014 elections in states that had passed new restrictions on voting, such as individuals who were not allowed to vote due to expired photo identification or who were not given provisional ballots when they lacked required IDs.

- *Outside Influence on Elections*

Recent federal legislative reforms and Supreme Court rulings have significantly changed the way that political campaigns are funded, giving outside groups, corporations, and wealthy individuals a stronger influence on the process. In 2002, the Bipartisan Campaign Reform Act, also known as the McCain-Feingold bill, attempted to regulate campaign financing by banning so called “soft money” – the “large contributions by wealthy individuals and corporations to national party committees, all of whose receipts were publicly disclosed” (Kelner & LaRaja, 2014). While the intention was to democratize the campaign process, instead funding shifted to outside political groups and social welfare organizations not required to disclose their donors. Then, in 2010 the Supreme Court ruled in *Citizens United v. Federal Elections Commission* that corporations and labor unions should not face limits on their “electioneering communications”- or spending on political advertising that expressly supports or opposes a specific candidate. With these changes, the role of the national political parties has diminished as outside funding has flourished (Bai, 2012). For example, two-thirds of all political ads in the 2000 presidential election were financed by the Republican and Democratic parties, compared to only six percent in 2012 (Kelner & LaRaja, 2014). These changes can give a few wealthy groups or individuals, including those with extreme views on political issues, a much stronger voice than larger, but less wealthy organizations and institutions.

Current Issues

- *Election Administration Modernization*

Many of the challenges related to individual voter rights are interrelated and, as noted by the Presidential Commission on Election Administration (2014) in their recent recommendations to the President, improving one area of election administration can have positive impacts on other areas. The major recommendations of the Commission (2014) were :

- Modernization of the registration process through continued expansion of online voter registration and expanded state collaboration in improving the accuracy of voter lists;
- Measures to improve access to the polls through expansion of the period for voting before the traditional Election Day, and through the selection of suitable, well-equipped polling place facilities, such as schools;
- State-of-the-art techniques to assure efficient management of polling places, including tools the Commission is publicizing and recommending for the efficient allocation of polling place resources; and,
- Reforms of the standard-setting and certification process for new voting technology to address soon-to-be antiquated voting machines and to encourage innovation and the adoption of widely available off-the-shelf technologies (Introduction).

Taking these steps could improve citizens’ access to voting, increase turnout of historically disadvantaged groups such as individuals with disabilities, and ease concerns about accuracy and voter fraud.

- *Voter Photo Identification & Voter Fraud*

Voter photo identification requirements are being examined across the nation; some believe these efforts are necessary, even though there is a lack of documentation of widespread voter fraud, the primary concern that ID laws aim to address. For example, in May 2014, then Iowa Secretary of State Matt Schultz issued a report detailing the findings of an extensive investigation into voter fraud in Iowa. The report identified 117 cases of election misconduct, with concerns primarily related to voting by non-citizens or by those with a felony criminal record (Schultz, 2014). But as of May 2014, only 27 people had been charged, with six found guilty, one judged not guilty, four cases dismissed, and the others still pending (Henderson, 2014). Charges may not have been pressed in certain cases because prosecutors did not find evidence of willful misconduct, but only misunderstandings (Nelson, 2012). Schultz has faced criticism regarding the costs of this investigation and whether the HAVA money used to hire the investigatory staff was an appropriate use of these funds (Associated Press (AP), 2014). Schultz also was criticized for an effort, struck down by the court system for not being authorized under Iowa law, to purge potential non-citizens from the voter rolls using a process that would have compared registered Iowa voters to a federal immigration database (AP, 2014).

Adding a photo identification requirement for in-person voting seems incongruous with efforts to expand voting by mail and absentee ballot. The majority of those affected by photo ID requirements are women; U.S. women often change their names due to marriage or divorce so only 66 percent of voting-age women have easy access to proof of citizenship and documentation with their current legal name (The American Prospect, 2013). Minority voters are also affected, with a study by the University of Chicago and Washington University reporting that photo ID laws could decrease turnout by young minorities by as many as 696,000 in the 2012 elections (Associated Press [AP], 2012). The study cites several issues that may make young minority individuals particularly unlikely to have the required photo identification, including incorrect addresses, suspended licenses, limited access to the documents needed to obtain a valid government ID, and a lack of awareness of the requirement or the process for securing an appropriate ID. Unique challenges for other populations include the lack of a birth certificate for elderly individuals, or the financial burden that low-income populations may face in obtaining an ID.

- *Disenfranchisement of Individuals with Criminal Convictions*

Article II, section 5 of the Iowa Constitution states “a person convicted of any infamous crime shall not be entitled to the privilege of an elector” which would permanently strip convicts of their suffrage rights. Historically, the term “infamous crime” has been applied inconsistently to various criminal convictions, including aggravated misdemeanors and some felonies but not others. As a result of an April 15, 2014 Iowa Supreme Court decision, *Chiodo v. Panel*, it is now clear aggravated misdemeanors are not infamous crimes that result in the loss of voting rights. However, the court made clear that the terms “felony” and “infamous crimes” were not synonymous, and further efforts would be necessary in order to differentiate the two terms and ensure that suffrage rights are not inappropriately restricted.

The act of voting is the foundation of democracy and those who have successfully completed the requirements put forth by the judicial system and the Department of Corrections should be given a pathway to restore their right to vote (Fair Vote, The Right to Vote Initiative, 2009). Iowa is currently one of only eleven states in which felons permanently lose the right to vote unless an application for re-instatement is submitted. Enfranchisement of ex-felons is automatically granted at a defined point during or after the term of incarceration in thirty-nine states and the District of Columbia (ProCon.org, 2014). In total, the voting restrictions placed on those with a criminal record mean that “an estimated 4.4 million Americans in 35 states are barred from voting even after completing their prison term and returning to their communities to live, work, and raise a family” (Nonprofit Vote, n.d., p.22).

In 2005, then Iowa Governor Vilsack announced that he would restore voting rights to an estimated 80,000 Iowans with felony records who had completed their sentences in accordance with the Iowa Department of Corrections. His executive order required a simple application process for ex-convicts to regain their voting rights (Foley, 2012). Shortly after taking office in 2011, Governor Branstad reversed Vilsack’s order. Under

Branstad, restoration of one's right to vote initially involved filling out a lengthy application, providing an Iowa Criminal History Record, providing a credit history, and verifying payment of court costs and restitution (*Office of the Governor*, n.d.). On December 19, 2012 Governor Branstad made substantial changes to this stringent voting rights restoration process. For Iowans convicted of a felony who have been released from prison and/or state supervision, the reinstatement process has been simplified and streamlined. In addition to removing the requirement for a credit history, the current application process provides instructions that are less complicated; clarification of the current policy requiring documentation to show an applicant completed payment of his/her fines, restitution, and court costs or has been making payments in good faith; information about free resources to help fill out the necessary voter restoration paperwork; and a detailed "checklist of materials" to ensure that applicants present all required materials. The automatic restoration of voting to ex-felons in Iowa between 2005 and 2011 resulted in an increased voter turnout when individuals were informed of their voting status. However, the presidential election of 2012 saw a dramatic decrease in participation of ex-felons due to the required application process for voting rights to be reinstated (Meredith & Morse, 2014).

Broadening voting privileges for individuals with felony records is a way to help them reconnect and re-engage with their communities (Zernike, 2005). This is particularly true for African American men, especially in Iowa, where they are disproportionately represented in the criminal justice system. In 2005, Black males in Iowa represented just 2% of the overall population, but 19% of those denied the right to vote in that year. Despite the streamlined application process to restore voting rights, of the 14,350 convicted felons who have completed their sentence since 2011, only a few have had their voting rights restored (Foley, 2014).

- *Outside Spending on Elections*

According to the Center for Responsive Politics (2014), the 2014 Iowa Senate race ranked third highest in the nation in terms of outside spending, with \$61,862,632 total. Much of the public is concerned about unlimited outside spending and undue influence on the election process, and how this can distort the public debate on important issues. There are various ideas about how to moderate campaign spending and level the playing field for candidates, ranging from a move to amend the constitution to establish that campaign expenditures can be subject to regulation and to set limits on spending, to more modest proposals for increasing the general citizenry's role in elections. Some common themes that emerge include an interest in more public financing of elections, a desire for effective limits on political contributions and expenditures, and a need for greater disclosure regarding those political contributions and expenditures (American Civil Liberties Union, n.d.; Bipartisan Policy Center Commission on Political Reform, 2014; Move to Amend, 2013). Though Iowa was recently given a failing grade from the National Institute of Money in State Politics for its laws on disclosure of independent campaign expenditures for state-level races, the director of the Iowa Ethics and Campaign Disclosure Board has expressed an interest in working with state legislators to strengthen these laws (Russell, 2014).

Recommendations

NASW recommends the following provisions:

- Ensure that efforts to update voter information systems do not discourage voting or negatively impact vulnerable populations.
- Encourage steps to modernize the election process and to improve access, accuracy, and efficiency.
- Oppose efforts to require photo identification for in-person voting.
- Implement legislation and rules to ensure that individuals who have been released from the Iowa criminal justice system (post prison term and probation) are given the means to regain the right to vote through an automatic voter right reinstatement process. Promote programs and policies that notify convicted criminals of their voting status.
- Pass legislation to clearly define infamous crimes for which voting rights should be restricted
- Support efforts to increase voter participation, especially among communities of color, low-income individuals, persons with disabilities, homeless individuals, the elderly, individuals convicted of a

felony who have had their voting right restored, and others who have traditionally been oppressed and less likely to vote.

- Support the integrity of the voting process by monitoring actions by the courts and legislature that challenge voter rights and/or voter access in Iowa.
- Promote efforts to limit outside influence on elections and to increase disclosure of outside spending.

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