Our Fragile Democracy —Part 3: The Voters

Beverly Pestel, *Columnist*

"Our Fragile Democracy" is a series of thought-provoking columns by retired local professor Beverly Pestel exploring the history and struggles of our nation's form of government from its founding to our current social, cultural and political tensions — looking at solutions and means of learning to work with one another, in hopes of preserving our democracy.

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It would seem that the first issue the Founders would need to address in a representative democracy would be deciding who should be allowed to vote. You would think that, right? But no, the Constitution as originally written, did not define who could vote. That is a perplexing omission. The Founders established a government on the principle of "people rule" but decided not to define which people should have the privilege of voting. Does this imply that they presupposed that all occupants of the new nation should be allowed to vote? It would seem not. The decision as to who could vote was left to the states. The states originally decided that voters had to be twenty-one, male, and own land – and in some states Protestants only were given the vote. Evidently, some of the leading colonists' views were that only this group were committed members of the community and not susceptible to disorder and mob rule.

If this sounds a little strange to you, I agree. Okay, the Founders had a lot on their plate, a lot to get done, a lot of issues to resolve, but this one seems kind of important. The decision to leave voting privileges to the states seems like an abdication of responsibility. The decisions made by the states seem more than a little self-serving. The American Revolution occurred in part because of a belief that a government derived its legitimacy from the consent of the governed, but evidently not all the governed. The colonies had a history ripe with discontent and disorder, and mob rule sometimes did win the day over the state governments that were almost entirely in the hands of those twenty-one plus male Protestant landowners. Well, I guess that explains it.

Continued "mob" pressure, however, did lead this new union to gradually expand voting rights. By 1790 all the states had eliminated the religious requirements for voting. Gradually through the early 1800s restrictions based on owning property or being a taxpayer were removed. By about 1860, white manhood suffrage was essentially complete. Well, it was a start, but as a woman writing this, I'm still not impressed.

The path to voting rights for all citizens over eighteen was arduous, painful, and torturous – literally. Women suffragettes were incarcerated and force-fed with tubes down their throats when they conducted hunger strikes while fighting for the right to vote. Although legally eligible, Black people were beaten and lynched for trying to vote. Poll taxes were imposed, absurd "literacy" tests used, and bean-counting tactics employed to deny Black people access to the ballot.

It took multiple Amendments to the Constitution to finally give every citizen, men and women, over eighteen the right to vote. Ensuring that all of these citizens would have equal access to the ballot, however, was a different issue.

The Twenty-Fourth Amendment and the Voting Rights Act of 1965 were needed to enforce the right to vote. These additions outlawed "literacy" tests and poll taxes that had been used primarily against Blacks, and provided for federal examiners. A critical part of the 1965 Act was the preclearance required by the Justice Department civil rights division. Preclearance was needed for any new voting practices in Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia and certain jurisdictions in four other states where discriminatory practices had been documented. The result was that the Voting Rights Act vastly increased the number of black voters. The Voting Rights Act was readopted and strengthened in 1970 and 1975 at which time all or parts of nine additional states were included in the preclearance category. In 1982 Congress extended the preclearance section for twenty-five years. In 2006, Pres. Bush signed legislation

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extending the Voting Rights Act for another 25 years. So, that should put the voting issue to rest at least into 2031, right? Sadly, no.

After nearly two hundred years of federal action in increasing and protecting access to the ballot, representative democracy took a hit and our fragile democracy developed a crack. In June of 2013, in a five-to-four ruling, the Supreme Court struck down the section of the Voting Rights Act that deals with preclearance for voting changes. That action severely gutted the tool the federal government had used for fifty years to block discriminatory voting practices. A six-to-three Supreme Court ruling in 2021 further weakened the Voting Rights Act by upholding two Arizona laws passed in the wake of the unfounded claims of election fraud in the 2020 election. These laws restrict how ballots can be cast and are generally seen as disproportionately affecting minority voters.

The crack could be repaired by passing a new voting rights bill in Congress. However, Republicans do not support a new bill and Democrats do not have a large enough majority to enact it by themselves. In the absence of a new bill some aspects of voting rights reside back in the states. Numerous Republican controlled states have, or are in the process of, enacting voting laws that have the effect of limiting access to voting by certain segments of the population.

I have an aversion to playing Chicken Little and screaming "The sky is falling." However, it seems like this crack in the dome covering our democracy is serious. Whatever way you look at it, and regardless of what the writers of these new state laws say, many of the voting changes are making it more difficult to vote for those described by some of our Founders as susceptible to disorder and mob rule. In other words, it would seem that non-white, non-male, non-privileged citizens may not be completely trusted to vote the "right" way by those writing these state laws.

In Wisconsin, the latest attack on voting access has been the recent State Supreme Court's ruling outlawing drop boxes. There is also a question as to whether the individual voter is required to personally place their absentee ballot in the mail or in the hands of their town clerk in order for it to be a legal vote. The impact on the elderly and disabled could be substantial in limiting their ability to vote.

C-R-A-C-K. We have reached a point where it appears that actions have been taken that are "not connected with the public good" as Hamilton warned. Are these voting restrictions "the honest errors of minds led astray by preconceived jealousies and fears...[or] other motives not more laudable?" The voters must decide whether the crack requires that we make a change in those we have chosen to be our representatives and who have the authority to write laws. Again from Hamilton: "Happy will it be if our choice should be directed by a judicious estimate of our true interests."

Beverly is a retired professor. She lives in a remodeled farmhouse and tends 40 acres of woodland in Richland County. When not in the woods she spends her time reading, writing and enjoying the beauty of the Driftless Area.

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