

The Goodness of Such a Government: Securing the Right to Vote

On the final day of the Constitutional Convention, after months of much vigorous debate, delegate Benjamin Franklin rose to speak in full support of ratification of the Constitution. In part, he said, “Much of the Strength and Efficiency of any Government in procuring and securing Happiness to the People depends on Opinion, on the general Opinion of the Goodness of that Government as well as of the Wisdom and Integrity of its Governors.” In the context of the United States of the twenty-first century, Franklin’s words call for the codification of federal voting rights legislation.

The relation to Franklin’s assertion is twofold. Firstly, a government cannot begin to know the public’s “general Opinion” if large swaths of the electorate are disenfranchised from expressing that opinion. Secondly, if “Much of the Strength and Efficiency of any Government in procuring and securing Happiness to the People depends on “Opinion,” “the People” cannot find “Goodness” in such a government, and its elected officials, that deny or abridge any citizens’ right to express their opinion.

Contemporary disenfranchisement, targeting people of color, is evident in voter registration restrictions, eliminating polling stations, purging the voter rolls, gerrymandering, and voter identification laws. The Supreme Court’s decision in *Shelby County v. Holder* opened the floodgates for suppression of the “general Opinion” by gutting the *Voting Rights Act of 1965* (VRA). Specifically, the Court deemed preclearance unconstitutional. Preclearance required states identified by the VRA to receive federal government approval prior to amending their election law. The practice sought to ensure changes had neither “the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.”

The argument made in the Court's *Shelby* opinion, penned by Chief Justice John Roberts, is frequently employed by those who adamantly oppose voting rights legislation. Roberts argues that "current conditions" (ones that lack the poll taxes and literacy tests of the twentieth-century) make preclearance unnecessary. He asserts that the vast increase in voter registration and voter turnout among communities of color renders the legislation antiquated. The truth, however, is just the opposite. As Justice Ginsburg so eloquently articulated in the Court's dissenting opinion, "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

Roberts, and others, fail to grasp that such improvements are a direct result of the proactive measure of preclearance. Just as Ginsburg predicted, in its absence, suppression of the "general Opinion" thrives. The *American Civil Liberties Union* finds that over four hundred voter suppression bills were introduced in state legislatures in recent years. The *For the People Act of 2021* and the *John R. Lewis Voting Rights Advancement Act of 2021* were recently introduced in Congress to rectify the Court's error. Both failed to become law.

"Happiness to the People" cannot be founded, much less maintained, in a government that professes to value the opinion of all but secures opinion for only a select few. A democracy that actively or passively disenfranchises any of the "general Opinion" is no democracy at all. "The People" cannot find happiness in such a government. There is no inherent "Goodness" in such a government.

In the same address before the Convention, Franklin detailed the contest of ideas that occurs when a group of individuals gather together. They bring with them their whole selves, he argued, both their "joint wisdom," and inevitably, their joint "prejudices" and "errors of opinion." Such a debate should be a microcosm for the larger electorate. Democracy should be

an arena for ideas to flourish, vigorous debate to ensue and, ultimately, the majority's opinion to prevail. Through the ratification of the Constitution, Franklin, and his contemporaries, advanced the "contest" to future generations, merely in a different form: the voting booth. At the Constitutional Convention, however, white men who lacked property, Native Americans, women, and African Americans were not afforded a seat at the table. Nearly three centuries later, "the Government," and its "Governors," have the opportunity to make a different choice about who gets to debate at the table of democracy.

The United States still has a chance to secure "Happiness to the People" by codifying voting rights protections—allowing for the accurate evaluation of the "general Opinion" of *all* of "the People." Federal voting rights legislation would serve as the first step to procure and secure "to the People" leaders of "Wisdom and Integrity" and a Government of "Goodness."

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