

tion condemns.”¹⁸⁶⁸ The Constitution provides that the qualifications of electors in congressional elections are to be determined by reference to the qualifications prescribed in the states for the electors of the most numerous branch of the legislature, and the states are authorized to determine the manner in which presidential electors are selected.¹⁸⁶⁹ The second section of the Fourteenth Amendment provides for a proportionate reduction in a state’s representation in the House when it denies the franchise to its qualified male citizens¹⁸⁷⁰ and specific discriminations on the basis of race, sex, and age are addressed in other Amendments. “We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record . . . are obvious examples indicating factors which a state may take into consideration in determining the qualification of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot.”¹⁸⁷¹

The perspective of this 1959 opinion by Justice Douglas has now been revolutionized. “Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the rights of citizens to vote must be carefully and meticulously scrutinized.”¹⁸⁷² “Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government. . . . Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citi-

¹⁸⁶⁸ *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50–51 (1959).

¹⁸⁶⁹ Article I, § 2, cl. 1 (House of Representatives); Seventeenth Amendment (Senators); Article II, § 1, cl. 2 (presidential electors); Article I, § 4, cl. 1 (times, places, and manner of holding elections).

¹⁸⁷⁰ Fourteenth Amendment, § 2. Justice Harlan argued that the inclusion of this provision impliedly permitted the states to discriminate with only the prescribed penalty in consequence and that therefore the equal protection clause was wholly inapplicable to state election laws. *Reynolds v. Sims*, 377 U.S. 533, 589 (1964) (dissenting); *Carrington v. Rash*, 380 U.S. 89, 97 (1965) (dissenting); *Oregon v. Mitchell*, 400 U.S. 112, 152 (1970) (concurring and dissenting). Justice Brennan undertook a rebuttal of this position in *Oregon v. Mitchell*, 400 U.S. at 229, 250 (concurring and dissenting). *But see* *Richardson v. Ramirez*, 418 U.S. 24 (1974), where § 2 was relevant in precluding an equal protection challenge.

¹⁸⁷¹ *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959).

¹⁸⁷² *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).