Constitutional Amendment: Enfranchising Felons and Citizen-Led, Non-Partisan Redistricting.

Syed Arsalan Ghani

Professor Joel Seligman. PSCI 212: Supreme Court in US History.

University of Rochester

Text of the Amendment:

Section. 1. 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 former, current, or future felony convictions.

Section. 2. For the purposes of decennial census and associated congressional redistricting conducted by a State, States are to form independent redistricting commissions which are prohibited from taking into account partisan or political considerations.

Section. 3. The Congress shall have power to enforce this article by appropriate legislation.

1 Introduction

Chief Justice Earl Warren succinctly summed up the enfranchisement guarantees of the American democratic life in Reynolds v. Sims: *"...history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely ... is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."* [1] There are, however, two looming dark clouds over the essential right of suffrage for all: felon disenfranchisement and partisan redistricting. These two practices hinder the right of all American citizens from participating in free and fair elections: one of the most sacrosanct privileges afforded by the Constitution.

Felon disenfranchisement—now a hallmark of all but two states in the Union—has its roots in the English laws of "attainder" wherein legal offenders were stripped from their right to participate in political life.[2] This sort of "civil death," also a remnant of ancient Greece and Rome, found a stronghold in Colonial America and survived through the Revolutionary and Civil War, Reconstruction, and women and racial minorities' suffrage. It now affects 5.85 million people, or one out of 44 adults, from participating in American political sphere and for some this punitive punishment stays with them even after the conclusion of their sentence.[3] The judicial branch has upheld these disenfranchisement laws, more recently in Richardson v. Ramirez, wherein the Supreme Court deemed convicted felons may be constitutionally disenfranchised based on §2 of the 14th Amendment.[4] Currently, Black Americans are disenfranchised due to felony convictions at a rate 3.7 times greater than that of the non-Black population,[5] and there is evidence of an inherent link between disparities in the criminal justice system and the disparities in political representation.[6]

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[1] Reynolds v. Sims, 377 U.S. 533, 555 (1964).

[2] Mary Sigler, *Defensible Disenfranchisement.* 99 Iowa L. Rev. 1691 (2014).

[3] Felony Disenfranchisement Laws (Map) American Civil Liberties Union, https://bit.ly/37BR9xs (last visited Nov 30, 2020).

[4] Richardson v. Ramirez, 418 U.S. 24 (1974).

[5] Chris Uggen et al., Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction (2020)

[6] Ibid.

A related issue in this enfranchisement calculus is that of redistricting after a national census for the purposes of congressional and state-house representation. While there are multiple ways to appropriate representation: two stand out. Racial and partisan redistricting—also known as gerrymandering—are methods by which state legislatures may redraw district lines to dilute the will of the population. The Supreme Court resoundingly declared racial gerrymandering as unconstitutional in Miller v. Johnson in which the Court's opinion held that the Equal Protection Clause prohibits state legislatures from using racial demographics to draw district lines.[7] However, the specter of partisan gerrymandering, through which legislatures use party-affiliation information and related demographics to draw district lines still remains constitutional. After the 2010 cycle of redistricting, estimates range that 59 seats in the U.S. House of Representatives "shifted" due to partisan gerrymandering: 20 for the Democratic Party and 39 for the Republican Party.[8] This shift affected the representation of and indirectly disenfranchised 42 million Americans.[9] Unlike racial gerrymandering, the judicial branch finds this issue nonjusticiable; in Rucho v. Common Cause, the Court held that ruling on partisan gerrymandering is beyond the scope of federal judiciary and must be relegated to and legislated by the Congress.[10]

This paper argues for a constitutional amendment which systemically re-enfranchises convicted felons—based on past, present, or future felonies—by making it illegal for states to unilaterally disenfranchise felons. It analyses the intense dichotomy of race and disenfranchisement by analyzing Common Law, Reconstitution-era legislation, and leading judicial cases and then argues for the need for keeping felons enfranchised. The paper—and by extension the amendment—then turns to partisan gerrymandering by mandating that states set up independent commissions, prohibited from using partisan considerations, to draw district lines. The paper will analyze some specific examples of partisan gerrymandering, its effect on congressional and state-house races, how it undermines the central tenets of American democracy, and will discuss potential solutions.

[7]Miller v. Johnson, 515 U.S. 900 (1995).

[8]Alex Tausanovitch Danielle Root, *How Partisan Gerrymandering Limits Voting Rights* (2020).

[9]Ibid.

[10]Rucho v. Common Cause, No. 18-422, 588 U.S. (2019)

2 Felon (Dis)Enfranchisement

2.1 Historical and Racial Context.

Disenfranchisement as a punishment for criminal offenses has existed from ancient Greece and Rome to medieval Europe and thus was extended to the Colonies. This punishment was usually considered one of the more severe ones since a loss of voting rights was usually accompanied with loss of other citizenship privileges such as right to serve in legions etc.[11] The American Colonies, especially at Plymouth, Massachusetts, and Maryland, had varying models of denying polity membership to any "opposer of the good and wholesome law."[12] At the Constitutional Convention, while the Framers opposed most medieval punishments, they did not explicitly rule out criminal disenfranchisement as a penalty and therefore it was ultimately left to the states. This historical context helps frame contemporary felon disenfranchisement in the major civic and political traditions of the United States namely: liberalism, republicanism, and racial politics.[13] Alec Ewald, a disenfranchisement researcher, explains that felon disenfranchisement enshrines classical liberalism by preventing illegitimate use of the voting power by criminals, enshrines republicanism by disenfranchising "morally unworthy individuals"; and for race supremacists, by silencing the voices and muting the political power of certain racial and ethnic groups.[14] Since the republicanism and liberalism case is at best "unproven,"[15] the latter of the three transitions us into the most effective way felon disenfranchisement has been used in the post-1870 and post-Civil War America to curtail the suffrage of racial minorities, albeit under false pretenses.

Given the Common Law justification and further Constitutional silence on this important matter, it is now necessary to ascertain that race was the leading reason for justifying felon disenfranchisement laws. Statistical analyses of felon disenfranchisement legislation have pinpointed two clear spikes in the number of laws enacted: one during 1840s in the Northeast and the second in the Southern states following the passage of the Reconstruction Amendments. The former

[11] Manza, J. and Uggen, C., 2006. Locked Out: Felon Disenfranchisement And American Democracy. New York, New York: Oxford University Press.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

was a response to the loosening restrictions of property and other assets that predicated white male suffrage. As soon as states like New York dropped their property and poll tax requirement for white men—they also responded to this unprecedented suffrage with felon disenfranchisement laws that disenfranchised all others, in fear that suffrage may expand even further to the "undesirables."[16] The period between this 1840 fear-based disenfranchisement and Reconstruction was the Civil War and due to the fact that only a small minority of states allowed Black people to vote, there was virtually no reason to enact felon disenfranchisement laws to target them. Right after the Civil War, specifically between 1865 and 1900, 19 states overwhelmingly added or amended statutes ensuring felon disenfranchisement. This also coincided with the first time that the our modern conception of police started to take hold—evolving from slave patrol—and when prisons "began to contain large proportions of African Americans for the first time."[17] For example, in Alabama, the state with one of the most harshest restrictions on voting while incarcerated, non-whites who made up 2% of the prison population in 1850, made up 74% by 1870. During these times states, like Alabama, also amended their laws to include several felonies and misdemeanors eligible for disenfranchisement to curtail felons from voting with non-Whites taking the brunt. For example, John Burns, a sponsor of a disenfranchisement bill in Alabama, remarked that, *"the crime of wife-beating alone would disqualify sixty percent of the Negroes."*[18] Anecdotal evidence aside, empirically speaking, when Manza and Uggen (2006) looked at the vast amounts of prison-composition and legislation-enactment data: they found that these two waves of felon disenfranchisement are clearly and significantly associated with the percentage of non-whites in a state's prison. Similarly, between 1870 and 2002, right after the 15th Amendment allowed citizens regardless of color to vote, a state's nonwhite population, non-white male population, and non-white prison population all became significant predictors of the state passing felon disenfranchisement laws.[19]

Angela Behrens notes that "adoptions of disenfranchisement laws were not free-floating events," but rather posits that they were tied to changing social dynamics of a country that wit-

[16]Ibid.
[17]Ibid.
[18]Ibid.
[19]Ibid.

nessed "a spread of voting rights."[20] Analyses of legislative history and data from the 1840 expansion of suffrage to the passage of Reconstruction Amendments underscore that race was the biggest predictor of felon disenfranchisement laws: in a criminal justice system which particularly victimizes Black people.[21]

2.2 Contemporary Trends and Key Counterarguments.

As of 2020, 48 states have some sort of felon disenfranchisement laws and only Maine and Vermont do not have any felony-based restrictions on their citizens. Out of those 48, 11 states have indefinite periods of this restriction even after the completion of the criminal sentence. Legal scholars, like Mary Sigler,[22] therefore find it hard to reconcile these laws' restorative intention with their punitive effect.[23] In fact, scholars have viewed the American way of disenfranchisement as "the harshest restrictions on offender voting rights of any modern democracy," and have rejected the models of "civil death" for more nuanced and liberal-democratic ways of ensuring universal suffrage.[24] Moreover, with the modern criminal justice system incarcerating Black people at a rate five times greater [25] and disenfranchising them at a rate 3.7 times higher than that of the general population: it is clear that our felon disenfranchisement jurisprudence is still systemically prejudiced and needs reform.

However, it seems that these laws, dubbed as "modern Jim Crow Laws" [26] are here to stay. The current framework relies on Richardson v. Ramirez [27] in which the Court's opinion relied heavily on the express language and textualist interpretation of the 14th Amendment to sustain felon disenfranchisement. This was ironic because not only is the 14th Amendment considered the great equalizer of the American people but also because the Court justified its reasoning

[20] Ibid.

[21] See Footnote 5.

[22] See Footnote 2.

[23] Elizabeth A. Hull, The Disenfranchisement of Ex-Felons 12–13 (2006) (comparing U.S. practices to those of countries around the world).

[24] See Footnote 2.

[25] Ashley Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons (2016).

[26] Amanda Wong, *Locked Up, Then Locked Out: The Case For Legislative—Rather Than Executive—Felon Disenfranchisement Reform,* 104:1679 Cornell Law Review (2019).

[27] See Footnote 4.

with its second section which is considered "dead letter" in American law.[28] Perhaps this is best noted in the dissent of Justice Thurgood Marshall who held that the second section of the Amendment, *"was designed to provide the special remedy of reduced representation to address the disenfranchisement of blacks,"* and not to further sustain disenfranchisement.

There are two ways that felon disenfranchisement, with its original intent of disenfranchising only voters of color, can be relegated to annals of history: either each state's legislature outlaws it or through an amendment to the Constitution. The problem with leaving it up to each state's legislature is exemplified by the 2018 Amendment 4 of Florida's Constitution. It "restore[d] the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole or probation," excluding sexual offenses and murder and was passed by a 64.55% of the voting population.[29] The intent of Floridians was clear: get rid of disenfranchisement laws. Soon after this Amendment passed, the Governor signed a Florida Senate bill into law which required that "people with felony records pay all fines and fees associated with their sentence prior to the restoration of their voting rights." Not only did this subvert the amendment, but it was an enactment of poll tax applicable to the recently enfranchised population. The law was challenged multiple times, until the Eleventh Circuit Court of Appeals, in September 2020, found it to be constitutional. This inherent issue with leaving such a racially charged issue up with state governments is clear: there would be road blocks along the way and the disenfranchised, in the words of Frederick Douglass, would remain "brand[ed]... with the stigma of inferiority."[30] An amendment to the federal Constitution is the best and most efficient way forward. Not only would it supersede the textualist understanding of the 14th Amendment's §2, but also would apply evenly all over the United States.

Proponents of felon disenfranchisement laws base their arguments on values of liberalism and republicanism. Indeed these proponents argue that "offenders who commit serious felonies are subject to regulatory disenfranchisement because they have violated the civic trust."[31] While the appeal of using disenfranchisement as a tool to affirm our commitment to a liberal-democratic

[28] See Footnote 11.

[29] Jones v. Florida, No. 19-1455.

[30] See Footnote 11.

[31] See Footnote 2.

community is apparent,[32] it does not take into account that most felons have already been chastised by the proceedings of the judicial branch and have been sentenced, usually by a court or a jury. Thus it seems redundant and extra-judicially punitive for states to attach more conditions upon the offender. The threat to our liberalism and republicanism values are, however, more accentuated and readily apparent with the continued existence of these very laws. This is because when Black voters are stripped from suffrage at a higher rate than other racial groups, it negatively impacts their ability to petition their representatives and diminishes their electoral power.[33] Moreover, since the incarcerated are considered residents in the jurisdictions wherein they are imprisoned for legislative reapportionment but cannot exercise their right to vote: these "districts lose political influence."[34] Growing body of evidence also suggests that ex-felons who are rehabilitated in their communities, receive social support, and are actively ingrained in the society are less prone to recidivism,[35] thereby upholding their civic and public responsibilities. A second argument against felon enfranchisement is that of these modern disenfranchisement laws being racially neutral i.e. "all who are convicted of felonies are subject to the same sanction."[36] While this is a compelling argument, the history and roots of these laws are certainly steeped in race-based prejudice. Moreover, this also does not discount the possibility that racial considerations are associated with disenfranchisement laws but only that our "contemporary justifications are almost never explicitly racial."[37] Furthermore, through empirical analyses presented above and America's anomalistic position amongst modern democracies, the most plausible conclusion one draws is that race plays an important role in relation to felon disenfranchisement laws despite laws being "color-blind."[38]

Supreme Court Justice Thurgood Marshall wrote in his concurring opinion in Procunier v. Martinez:[39]

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[32]Ibid.

[33]Sarah K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States,* 1948–2010.

[34]Giovanna Shay, *Ad Law Incarcerated,* 14 Berkeley J. Crim. L. 329, 362 (2010).

[35]See Footnote 11.

[36]Ibid.

[37]Ibid.

[38]Ibid.("*Indeed, when we ask the question of how we got to the point where American practice can be so out of line with the rest of the democratic world, the most plausible answer we can supply is that of race."*)

[39]Procunier v. Martinez, 416 U.S. 428 (1974).

> "When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded. If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment."

This amendment advocates for the incredible need of allowing felons, imprisoned or not, to participate in one of the most important institutions of citizenship and highlights how disenfranchisement, historically shown to be racially motivated, hurts not only the offender but also the society around them. Instead of dehumanizing and ostracizing people who have broken our civic trust, this amendment promotes their rehabilitation and brings us into the next frontier of civil rights.

3 Partisan Gerrymandering

3.1 The Problem with Partisan Gerrymandering.

Partisan gerrymandering, much like felon disenfranchisement, has been a hallmark of American political life. The Colonies were aware it and so were the Framers. Indeed George Washington accused Patrick Henry of trying to gerrymander Virginia during the first Congressional elections.[40] The Framers were aware of this becoming an issue and took proactive steps from letting unchecked gerrymandering proceed by making districting a prerogative of state legislatures kept in check by Congress. This is the basis on which Federal Courts have refused to adjudicate cases and controversies regarding partisan gerrymandering: *"to hold that legislators cannot take partisan interests into account when drawing district lines would essentially countermand the Framers' decision to entrust districting to political entities."* [41] While partisan gerrymandering is perfectly legal under these cases, it remains a bone of contention in contemporary United States which is not only greater in size and population but also more polarized than during the first Congressional elections.

[40] See Footnote 10.

[41] Ibid.

There are some obvious and salient problems with partisan gerrymandering by which state legislatures use political affiliations and partisan interest to draw district lines. If a state legislature is controlled by a single party in majority then they can impact the state's districts in their favor for a minimum of 10 years. If and when another party gains control of the legislature—they can invariably do the same, keeping the state and country in a cycle dominated by politicians' interests. Through partisan gerrymandering, a party (or candidate) that gets the minority of votes can end up getting the majority in a state's legislative representation. Experts have called this "dramatically [failing] a basic test of democracy—votes [do] not translate into political power."[42] An analyses of partisan gerrymandering also found that it has always accompanied "increased restrictions on voting" through laws such as voter identification laws.[43] Another problem with partisan gerrymandering is that it reduces the electoral competitiveness in races where districts have been gerrymandered to always produce the same results, regardless of important factors such as the candidate's performance in Congress. Recent studies have found that more than 75% of congressional seats are now uncompetitive i.e. winning candidate's margin of victory is great than 10 percentage points. Another associated issue that is a consequence of such partisan-based gerrymandering is the increase in ideological polarization of House members which ultimately polarizes the voters and the country.[44] Ideological polarization has slowly been increasing because of gerrymandering as this sort of partisan redistricting by reducing competition and increasing voter homogeneity exposes candidates for office with fewer dissenting voices. Therefore, instead of a moderate path—candidates prefer and choose more ideologically extreme alternatives.[45] The trivium of these three problems constitute what legal scholars have agreed is the biggest problem in United States' elections: partisan gerrymandering.[46] The next section provides

[42]See Footnote 8.

[43]Ibid.

[44]Forgette, Richard, and John W. Winkle. *"Partisan Gerrymandering and the Voting Rights Act."* Social Science Quarterly 87, no. 1 (2006): 155-73. Accessed November 30, 2020. http://www.jstor.org/stable/42956115.

[45]Theriault, *Party Polarization in Congress,* 76-84, and Carson et al., *"Redistricting and Party Polarization in the U.S. House of Representatives,"* 899-900.

[46]Norris, Pippa. 2017. *Why American Elections Are Flawed (and How to Fix Them).* Ithaca, NY: Cornell University Press.

relevant examples that showcase the aforementioned problems of a deeply undemocratic way of drawing districts.

3.2 Consequences: Selected Examples.[47]

Wisconsin; 2012, 2014, 2016. The Republican Party controlled Wisconsin after the 2010 census that required the legislation to redraw district lines. For the next three election cycles, the maps drawn ensured that the Republican Party even with just a bare majority would have more seats in the state assembly in any election scenario. For example, in the 2012 cycle, the Republican Party won 60 out 99 seats despite receiving only 48.6% of the vote. In 2014 and 2016, the Republican Party won 52% of the vote yet received 63 and 64 seats respectively. In these years, the Party always won more seats than the share of votes it received because the congressional maps were gerrymandered. It undermined the constitutional principle of "one person-one vote" as the maps allowed for some people's votes to matter more than others depending on what district they were in.

Massachusetts; 2012, 2014. It would be an oversight to just implicate one Party in this contentious issue. After the 2010 redistricting, in the 2012 state-house elections, the Democratic Party received 73% of the votes but secured 82% of the seats. The Republican Party won 25% of the vote but received 18% of the seats. Two years later, in the congressional race, the Republican Party received 24% of the vote but won no congressional seats. This is reminiscent of maps which have been "packed" and "cracked" to ensure one party's domination over the other.

Pennsylvania; 2006, 2012. Pennsylvania is the epitome of a gerrymandered state. We can analyze the effect of the partisan gerrymandering through comparing the results before and after the 2010 redistricting. In 2006, the Democratic Party received 2.2 million votes, while the Republican party received 1.7 million: resulting in a congressional delegation of 11 Democrats and eight Republicans. After the redistricting, in 2012- the Democratic Party received 2.79 million votes while

[47] The Conference Board, *Let the Voters Choose Solving the Problem of Partisan Gerrymandering* (2018), https://conference-board.org/publications/TCB-CED-Solving-Gerrymandering-Problem (last visited Nov 30, 2021).

the Republican party received 2.71 million: but the Congressional delegation comprised of 13 Republicans and just five Democrats. This striking reversal in the number of congressional delegates despite the Democratic Party having more votes resulted because of partisan gerrymandering and exemplifies one of the biggest problems with it: incumbent advantage.

3.3 Solutions and States' Rights.

Unlike felon disenfranchisement, the Supreme Court finds that Federal Courts have no jurisdiction in the issue. Chief Justice John Roberts writing for the majority in Rucho v. Common Cause states that, *"Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is 'incompatible with democratic principles,' does not mean that the solution lies with the federal judiciary."* [48] However, the Chief Justice does hint at a possible way to right this "unjust" way of running elections: a constitutional amendment and then outlines the various methods through which some states have outlawed partisan gerrymandering. For example: Colorado and Michigan now require a multi-member commissions—and not state legislatures—exclusively responsible for creating new district maps every 10 years.

This amendment also finds that such a commission, non-partisan and citizen-led, would be an excellent way to ensure that a majority in state legislature does not equate to skewed district lines for the foreseeable future. This is also the norm in many Western democracies (representative or parliamentary)—for example in the Kingdom of Great Britain, the Boundary Commission, which is non-partisan redraws district lines. Closer to home in Canada, independent commissions—exclusively made up of non-partisan members—draw district lines. In Colorado, Michigan, California, and Arizona, independent citizen-led commissions do the job which has been traditionally entrusted to state legislatures. These non-partisan and citizen-led commissions could be the first step away from the multi-pronged problems of gerrymandering. First of all, redistricting will no longer be predicated upon who has a majority in a state's legislature—thereby eliminating incumbent advantage. Fair districts would also increase electoral competitiveness as districts can no longer be "packed" nor "cracked" therefore reducing the possibility that one candidate may always run virtually unopposed. There is great potential for these commissions in reducing con-

[48] See Footnote 10.

gressional and state-house polarization as fairer districts, comprised of Democrats, Republicans, and Independents among others, expose voters to a diversity of thoughts and opinions. It would force candidates to take a "middle path" when legislating instead of ideological extremes. Given the Federal Courts' reticence in adjudicating this issue and the wide variety of legal challenges that these legislation would face in State, District, and Appeals Courts, this amendment advocates for making non-partisan, citizen-led redistricting commissions the law of the land through a Constitutional amendment.

Proponents of legislature-led redistricting may object to this amendment citing that it disregards state sovereignty and takes away a states' prerogative to make districts as they see fit. This amendment may appear to be taking this power away from the states—running contrary to the principle of federalism—but this is neither its intention nor its effect. The amendment advocates for the power of redistricting to remain with the People of a state and not the legislature. While there are many reasons for doing so, Justice John P. Stevens' dissent in Vieth v. Jubelirer articulates the need for taking away this prerogative from states remarkably. Excessive partisanship, according to Justice Stevens, goes against the constitutional duty of the legislature "to govern impartially."[49] This is to say that when redistricting is predicated upon partisanship, then the legislature voids its obligation to *"act impartially and, indeed, acts without 'rational justification.'"* [50] This amendment finds support in this point of view, which even the plurality in the Vieth v. Jubelirer echoed: *"excessive injection of politics* [in redistricting] *is unlawful."* [51] This amendment merely transfers redistricting prerogatives from partisan-prone legislatures to non-partisan, citizen-led commissions: keeping power in the state and with the People. Indeed that is a hallmark of a republican government as James Madison envisioned: *"[t]he genius of republican liberty seems to demand ... not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people."*[52] Keeping redistricting powers with incumbents confirm one of the biggest fears of the Framers: our politicians turning into tyrants and monarchs.

[49]Vieth v. Jubelirer, 541 U.S. 267, 317 (2004).

[50]Richard Briffault, Cornell Journal of Law and Public Policy, 14:3, *Defining the Constitutional Question in Partisan Gerrymandering* (2005).

[51]Ibid. Also see Footnote 49.

[52]The Federalist No. 37 at 234 (James Madison) (Heritage Press ed., 1945).

It is important that we relegate this power back to the People, with the sole purpose of mandating voter-determined districts i.e. the people dictate how districts are drawn.

4 Conclusion

This amendment has a simple goal: ensuring that all Americans remain enfranchised and that their vote counts. Therefore, by extension, the two sections of this amendment become means to achieve the end that citizens do not become pawns in a game of chess between two parties- by being directly disenfranchised through undoubtedly racist laws or indirectly through maps made by the legislature. As far as felon disenfranchisement is concerned, this amendment strives to ensure that the extreme American practices of withholding the ballot from felons, so steeped in race-based prejudice, comes to a halt. Legislation in nearly all states that allow for this discrimination have their roots in explicit race-based prejudice and we must come to terms with that so that we can usher in a new era of equal protection. Similarly, partisan-based gerrymandering, seen and felt by the Framers, is also a relic of the past and we now have robust and innovative solutions that ensure that everyone's vote counts- no matter where they live. Chief Justice Earl Warren's opinion in Reynolds v. Sims enshrined the fact that *"the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights."* This amendment allows for just that.