

## Supplemental Notes to Lecture 5: Civil Rights and The Four Freedoms

### I. The Current Debate Over Voting Rights



Earlier this year, the US House of Representatives passed “The For The People Act,” a federal voting rights bill that died three months ago in the Senate. Denounced by its opponents as a draconian and unnecessary bill that if enacted would infringe upon *states’ rights*, the law would have made voting registration nearly automatic throughout the country, required states to allow a minimum of two weeks of early voting, and granted to all eligible voters the right to cast a ballot by mail for any reason, which is referred to as no excuse absentee voting.

The original bill also included a provision (since removed) that would have weakened state photo ID laws, a proposal that sparked outrage on the part of many Republicans in Congress, including the House Minority Whip from Louisiana, Steve Scalise.

The politicization of something seemingly so innocuous—that is, requiring a voter to confirm their identity before casting a ballot—can be traced back to 2005, when the nation’s first strict voter ID law was passed in Indiana.

The constitutionality of that law was upheld three years later by the Supreme Court in *Crawford v. Marion County Election Board*.

In that ruling, the court argued that few would be burdened by the voter id law, and that the state of Indiana had a valid interest in preventing voter fraud.

In his dissenting opinion to that decision, then Justice David Souter wrote that widespread fraud had *not* been proven, and that the Voter Identification Law imposed an unreasonable and irrelevant burden on both the poor and the elderly.

In the *Crawford* ruling and in Souter’s dissent, the justices addressed the same three fundamental questions that have been raised in response to every legislative attempt to change voting laws since the 2020 election.

First, is a given proposal to change voting regulations likely to have a disproportionately negative *impact* on minorities? Second, is it *designed* to have a discriminatory effect? And third, is it needed to combat potential or actual instances of voter fraud?

In *Brnovich v. Democratic National Committee*, a major 6-3 ruling issued this summer that took into account those three questions, the Supreme Court sided with the Arizona state legislature, which in the name of preventing fraud, had made it illegal for third parties to collect and deliver ballots, a process its detractors refer to as “ballot harvesting,”—as you can perhaps tell just from the sound of it, a pejorative term.

In her dissent, Justice Kagan argued that restricting the *collection* of ballots by third parties presented a particular hardship for Native American voters who in disproportionately high numbers “need to travel long distances to use the mail.”

Writing for the majority, Justice Alito signaled to observers how the Court is likely to rule on upcoming voting rights cases by laying out five guideposts that courts should use when determining whether election laws similar to the one in Arizona are constitutional.

(According to the nonprofit Voting Rights Lab, twenty-two states have already passed, or have introduced, laws that restrict ballot collecting or “ballot harvesting.” It should be noted the supporters of ballot collecting argue that it is intended to assist individuals who are elderly, ill, or otherwise disabled. However, the 2016 Arizona law did make exceptions for family members, caregivers, and election officials, but not for “campaign workers” or “community activists.”)

Of particular note is the third guidepost that Alito presents, which reads as follows:

The size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider. Small disparities are less likely than large ones to indicate that a system is not equally open. *To the extent that minority and non-minority groups differ with respect to employment, wealth, and education, even neutral regulations, no matter how crafted, may well result in some predictable disparities in rates of voting and non-compliance with voting rules. But the mere fact there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote.* The size of any disparity matters. And in assessing the size of any disparity, a meaningful comparison is essential. What are at bottom very small differences should not be artificially magnified. (Emphasis added)

To get a sense of how that ruling may affect future cases, let's turn to Georgia.

This summer, the US Justice Department filed a lawsuit against the State of Georgia over its so-called "Election Integrity Act," [see this week's Supplemental Reading Materials], the statute signed into law this past March that instituted new voting regulations.

In its lawsuit, the Justice Department argues that the "Election Integrity Act" *intentionally discriminates* against minorities, specifically, against Black Americans.

Note how the emphasis placed on *intentionality* makes a stronger claim than one that would argue a law has a *discriminatory impact* on minorities. Such a stronger claim is now needed because a voting law that produces a *discriminatory effect* does not necessarily violate the Voting Rights Act; this according to the ruling in *Brnovich v. Democratic National Committee*.

Is there, then, compelling evidence to support the Justice Department's claim that the Election Integrity Act intentionally targets minority voters? Let's take a look at one representative provision.

As indicated on page 38 of the Bill,<sup>1</sup> Georgia has clearly reduced the amount of time voters have to request a mail-in ballot before Election Day, from 180 days (nearly six months) to 78 days (less than three months).

Why does this matter? Give people less time to make a request, and it's reasonable to assume fewer will do so—*unless* the shorter time frame gives them a sense of urgency, which could then actually *increase* the number of people requesting a mail-in ballot.

---

<sup>1</sup> "Not ~~more~~ earlier than 180-78 days or less than 11 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make, either by mail, by facsimile transmission, by electronic transmission, or in person in the registrar's or absentee ballot clerk's office, an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff." (38)

In an analysis of the Election Integrity Act, the *NYT* declares that the provision under consideration here “will almost certainly reduce the number of people who seek absentee ballots and the number of people who vote.”

But even if the reduced time frame does lead to fewer people voting by mail, perhaps they would then take advantage of the early in-person voting period and vote in-person instead?

On the one hand, it seems like this restricted time period hardly constitutes voter suppression (nor does it appear to intentionally discriminate against certain groups). On the other hand, we should pose a few simple questions.

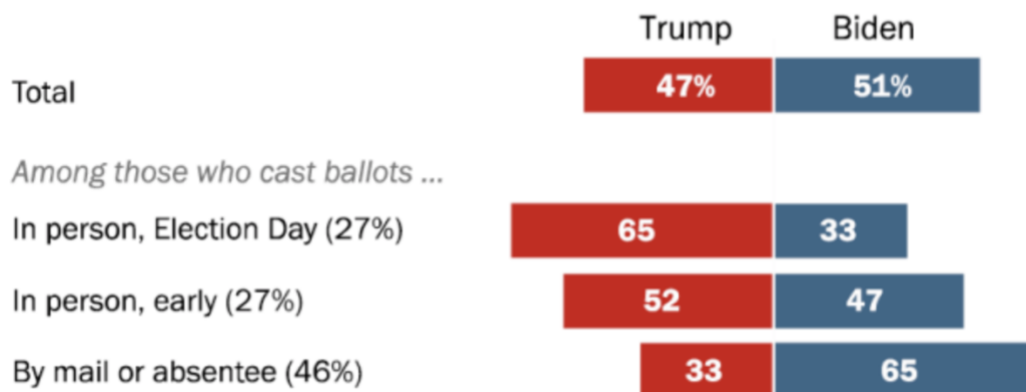
Namely: why shorten the time frame for requesting mail-in ballots in the first place? Why not even extend the period to nine months before election day, *assuming the goal is to have as many people participate in the election process as possible*.

Regarding this latter point, some Democratic Party officials assert that assumption is erroneous. They argue that Republicans think making it harder to vote by mail will lower turnout and help Republican candidates in very close races (which Georgia had in 2020, both for the Presidency and the Senate).

But *why would they think that*? It’s true that in the 2020 election, 26 percent of Georgia’s electorate voted by mail. Of those voters, 65 percent cast ballots for Biden, while 34 percent went for Trump, a dramatic difference that reflects national trends, according to a Pew Research Center report released this summer.

## Sizable divides in candidate support by vote method

*% of validated voters who say they cast a ballot for ...*



Such statistics have led some, like Republican Secretary of State [Brad Raffensperger](#), to go so far as to claim that Trump *cost himself the election* by baselessly attacking mail-in voting in the

months leading up to the election. That is, those who could only vote by mail were arguably deterred from doing so by Trump, and as a result they did not vote at all.

## **II. The Four Freedoms**

In the 1941 State of the Union address that I posted for this week, FDR declared toward the end of the speech that he wanted to work with Congress to create a nation, and even a world, which would be founded upon four essential human freedoms.

The fourth one Roosevelt introduces, Freedom From Fear, is included as a direct response to the battles raging across Europe at the time of his speech, which was delivered eleven months before the US declared war on Japan and Germany.

The first two, Freedom of Speech and Freedom of Religion, are of course taken from the 1st amendment to the US Constitution.

However, as reported by members of the press who were in attendance, FDR's presentation of Freedom From Want received a cold reception from many in Congress, whereas the assembled body was united in greeting each of the other three freedoms with a dutiful round of applause.

Now why was that?

You may think it's because FDR used somewhat vague and ambiguous language in describing the "economic understandings" associated with freedom from want.

However, the policy proposals he articulated minutes earlier in the speech made it clear what he thought securing Freedom From Want would entail. That is, "widening the opportunities for adequate medical care" and creating a government jobs program, would be achieved by raising taxes.

So, it wasn't a lack of understanding that explained Congress's mixed reaction to the idea of building a society in which citizens would experience Freedom From Want.

Rather, the nature of the response stemmed from the fact that, nearly eight years into the Roosevelt administration's fight for the New Deal, the idea of using progressive taxation to help fund social welfare programs and reduce income inequality had not become hegemonic.

In other words, the idea that redistribution was a good thing had not been embraced by both parties, and the support it did receive from congressional Democrats was hardly unconditional.

That may partly explain why, as late as the summer of 1942, the US Office of War Information noted with alarm that only 20 percent of American adults could identify the Four Freedoms.

So, in an attempt to resolve what was perceived to be a critical public relations problem, Norman Rockwell was commissioned to execute the Four Freedom paintings, which were reproduced in

The *Saturday Evening Post* over four consecutive weeks in 1943. They then went on a touring exhibition and were mass produced as posters.

Both of these efforts were sponsored by the federal government, in an attempt to weaken isolationist sentiments and deepen Americans' support for World War II.

Each of the paintings, in other words, makes a statement and delivers a message. *Each one not only presents an image of what a certain form of Freedom ought to look like but also encourages viewers to reflect on whether that ideal bears any resemblance to reality.*

For instance, in Rockwell's rendering of Freedom of Speech, we see an idealized depiction of a literally blue-collared man standing up to speak at a local town hall meeting.

His hands show clear signs of toil, while his expression and posture convey both humility and determination, along with a sense of respect for his surroundings.

He also commands the attention of the seemingly more affluent individuals who are seated close to him. They regard him with an air of polite interest and offer looks of calm encouragement.

In short, a mood of civility reigns, suggesting that those gathered at the town hall meeting are willing to compromise in order to reach some sort of a consensus.



Does such a representation of Freedom of Speech now appear outdated? If so, what does that indicate about contemporary understandings of Civil Liberties and Civil Rights?

**Quiz Question 5:** In the *Crawford* ruling and in Souter's dissent, the justices addressed the same three fundamental questions that have been raised in response to every legislative attempt to change voting laws since the 2020 election. What were those three fundamental questions?

**Quiz Question 6:** What did the US Supreme Court rule in *Brnovich v. Democratic National Committee*?

**Quiz Question 7:** View Rockwell's *Freedom of Religion*, *Freedom from Want*, and *Freedom from Fear* paintings (a link is provided in this week's Supplemental Materials). Then pick one of the paintings and explain why, in your view, its representation of a particular freedom has or has not become outdated.

- *Correction to Lecture 5: I misspoke when referring for the first time to Brnovich v. Democratic National Committee. In that case, the Supreme Court ruled on a law enacted by the Arizona State Legislature in 2016, not in 2021.*