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**Civics 101**

**Episode 104: Voting Rights**

[00:00:00] Who is the current speaker of the house? Don't even know. Will they rule in the president's favor or will they send it to the Supreme Court?

[00:00:07] You can't referred to a senator directly by their name. Congressional redistricting. Separation of powers. Executive orders. The national security council.

[00:00:14] Civics, civics, civics, 101!

**Virginia Prescott:** [00:00:19] I'm Virginia Prescott and this is Civics 101, the podcast refresher course on the basics of American democracy. If you're new to our show welcome welcome and even more welcome. If you'd like to have your questions answered by the pros. Leave us a message at 202- 798-6865. That's 202-798-6865, and you just might hear your voice on the air. You can also e-mail us at Civics101@NHPR.org. Today, voting rights. In the last episode of our series on the Reconstruction Amendments, we learned that the Constitution does not explicitly guarantee the right to vote to American citizens. But many Americans consider casting a ballot as the fundamental way to participate in our democracy. So who can vote and how did it get that way?

**Virginia Prescott:** [00:01:12] Victoria Bassetti is author of Electoral Dysfunction: a Survival Manual for American Voters. She's former chief counsel on a Senate Judiciary Committee and now a fellow at the Brennan Center for Justice at New York University.

[00:01:25] Victoria, great to have you with us.

**Victoria Bassetti:** [00:01:27] Thanks. It's a pleasure to be here.

**Virginia Prescott:** [00:01:29] What is the right to vote?

**Victoria Bassetti:** [00:01:32] There is no easy answer to it. And part of the reason there's no easy answer to it is it's not actually in the Constitution. When the constitution was drafted in 1787 the founders did not put a right to vote in the Constitution. In fact it didn't appear in the Constitution until 1868 and since then it's been probably one of the most contested rights or privileges or acts in our democracy. There's just no easy answer. I think most of us probably just think that the right to vote means we're a citizen of the United States.

[00:02:03] Therefore I have the right to walk into my polling place and cast my ballot for whoever I think should be president or representative or governor or whatever the matter might be. That's what we think it is. The courts and our Constitution have a somewhat different answer to that question. So when the, when the Constitution was being drafted one of the reasons why establishing the right to vote as a bedrock federal system wasn't so top of mind is because at the time there was no direct vote for president of the United States or even direct vote for senators so the voters didn't vote for president. They voted for electors who voted for the president. And that actually stays to this day. Even today, you don't vote for president. You vote for electors who vote for president.

**Virginia Prescott:** [00:02:53] Well let's examine that a little. Who was able to vote at the time of the writing of the Constitution?

**Victoria Bassetti:** [00:03:00] It was completely scattershot at the time that the Constitution was written in 1787, it's important to remember that our republic, our our country, was well along in terms of founding. Many of the original colonies had already written their own individual state constitutions and so the states had each individually created a system or a framework whereby the vote was cast. In Massachusetts for example blacks could vote. In New Jersey, women could vote -- certain women with a certain amount of money could vote. In some states, Catholics were barred from voting or Jews were barred from voting. So it was a complete hodgepodge. In general across the board, you can say when the Constitution was written and during the course of the kind of founding of the republic the overall perspective is white men with money or property can vote but there beneath that top line, sort of headline of who can vote, there are all sorts of little individual situations where select other groups could vote.

**Virginia Prescott:** [00:04:09] Who can and cannot vote in the United States today?

**Victoria Bassetti:** [00:04:14] In general across the board any citizen of the United States over the age of 18 can vote. There are a few notable exceptions to it. For example in many states felons and people who are in prison cannot vote. But again the hodgepodge nature of the way the franchise is defined means that there are exceptions to this. For example in Maine people who are convicted of a felony are allowed to vote even while they're in prison. In contrast in Florida if you've got a felony conviction ever on your record you're pretty much barred for life from ever being able to vote again.

[00:04:53] There are few exceptions of course. The final kind of major if you're a qualifier for who can vote is a residency requirement. So I'm a resident of the state of New York. I'm only allowed to vote in New York. I can't just hop on a plane and you know fly to Indiana and vote there if I feel like it. So the general rule is anyone over the age of 18 who is a citizen and is a resident of the venue in which they wish to vote can vote. You also have to register. That's the other little caveat.

**Virginia Prescott:** [00:05:25] So states did, as you mentioned, some of them did allow free black men to vote at certain periods. Some did allow women to vote at periods. But can you give us a sort of broader stroke look at American history. How that changed. Who gained or lost the right to vote?

**Victoria Bassetti:** [00:05:41] Yeah you know the American history of the right to vote is not a steady progress towards the point where we have current universal suffrage. It it ebbed and flowed. There were moments of time in American history where suffrage and the right to vote was expanded and more people were brought into the fold. And then there were moments where of course it was, it was, we were pulled back on it. In general in the decades after the Constitution was ratified, so in the early 19th century, there was an expansion of the right to vote. The property requirements were dropped. Interesting side note, in... That was not something that came about easily. In Rhode Island, there was actual rebellion on the street with people grabbing guns and cannons and using it to fight for an expanded franchise. Martial law was declared in Rhode Island over whether or not the franchise would be expanded to working men, if you will. But even while there was that expansion going on there was also kind of some contraction going on. So where women had once had the right to vote it was taken away. So in that kind of period after ratification and before the Civil War, you can say generally that more white men were brought into the fold but anyone else, who was you know African-American or a woman, were were kind of slowly pulled out of the fold. And the story for Native Americans is even more complex.

[00:07:17] But in general Native Americans were denied systematically the right to vote before the Civil War. And then the Civil War marks a really major turning point in the history of voting in America. The phrase "the right to vote" enters the Constitution for the first time in 1868.

[00:07:39] It's never been there before. Everyone sort of thinks oh, the right to vote it must be in the Constitution. That phrase doesn't appear until then.

[00:07:46] Not too long after the 15th Amendment passes. And that's the first time in American history when we think of as the right to vote is actually contemplated and spoken of by the Congress and by our nation. And then the 15th Amendment says the right to vote shall not be abridged on account of race. And so all in one fell swoop, African-Americans were enfranchised. But not Native Americans. Not women. And although it said you've got the, African-Americans had the right to vote, you can't deny the right to vote on account of race, states sort of scratch their head and said well I can't deny it on account of race. But how about if I deny it on account of you're not literate? Or on account of you can't pay a poll tax? Or on account of you've previously been convicted of a felony? So it left the you know, it left the room open for a bunch of other clever ways to keep people from voting, and in the wake of the Civil War, there was this flowering, kind of a negative flowering, but a flowering of creative thinking on ways to deny African-Americans the right to vote.

**Virginia Prescott:** [00:08:55] And then of course in 1920, the 19th Amendment. Women able to vote.

**Victoria Bassetti:** [00:09:00] Yes in fact what's really interesting about the 19th Amendment is that even before the 19th Amendment, there were a bunch of states which had begun allowing women to vote in local elections. So Wyoming for example was, allowed women to vote. And there's this really wonderful story, I'm not entirely sure, it might be apocryphal, where when Wyoming was applying for statehood, the Congress sent Wyoming a note back that said, you know we'll, we'll let Wyoming become a state in the United States. But you have to get rid of that provision that allows women to vote. And Wyoming wrote back and said: we come in with our women or not at all. And so Wyoming kind of held the line and said no. Women've got, women are going to vote in Wyoming. So in a lot of states, women were allowed to vote for, say, the State Board of Education, or the governor, or you know, small kind of things. And what had happened by the time the 19th Amendment passed is there were a lot of states that had kind of experimented with allowing women to vote. The other important thing to remember: it happened after Prohibition had already passed. So to many people who were opposed to giving women the right to vote, they were opposed because they viewed women as a powerful force against drink.

**Virginia Prescott:** [00:10:18] This was they led the Temperance Movement, for the most part.

**Victoria Bassetti:** [00:10:21] Exactly. And this nation, having instituted Prohibition, the great political battle where women were the swing vote was over. And it was that that sort of neutral ground that allowed the, the amendment to pass.

**Virginia Prescott:** [00:10:45] Some states do have the right to vote written explicitly into their constitutions. Others do not. How does it change things when the people's right to vote is written down, and when it isn't?

**Victoria Bassetti:** [00:10:58] Yes it's it's extraordinary. So you know Missouri has a right to vote written in its constitution. New Hampshire has the right to vote written in its constitution. And each of them has the right to vote written in their constitution in a slightly different way. What it means is when the state, Missouri state or New Hampshire or Wisconsin as the case might be, adopts a new law requiring either, you know, voter ID or requiring proof of citizenship before you can register etc., rather than suing in federal court and attempting to kind of navigate the the the strange pathways of the right to vote under federal law, you can go straight to state court. Straight to the Missouri Supreme Court and the Missouri Supreme Court will say hey you know what? We've got our Constitution and our Constitution says you've got a right to vote. So under our Constitution this provision is unconstitutional. On the other hand if you were to go to federal court and try to make that argument the Federal Court would go like: oh, there's no right to vote under the federal law. So in order for us to kind of analyze this we need to look at the following, you know, 15 factors. Weigh all of these things. Not clear. OK. Provision goes through. So, it's a, you know it's a it's really extraordinary.

[00:12:14] There are a lot of states where you know you've got a strong right to vote and any efforts to burden that right to vote are going to get struck down by your state supreme court. If you don't live in one of those states, you've got to go to federal court and then who knows what's going to happen.

**Virginia Prescott:** [00:12:30] Why not change the system and organize it on a federal level? I mean would that be more fair or at least more uniform?

**Victoria Bassetti:** [00:12:40] You know it's interesting because obviously of many states or many other countries do have this sort of nationalized voting administration system. Canada does. Mexico does. But we have first of all a lot of affection in America for our local voting systems and for our states as a way of doing it. So there's a reluctance to kind of create giant new federal bureaucracies in America. Combined with the fact that we have affection for our local state customs and practices. So as appealing as it sounds to create a federal national voting system, it's not something that is instinctively something that most Americans would nod their heads at. It's very, it's also very complicated. You and I, most people tend to think of the big federal elections, right? We think of the presidential election or the congressional elections that happen every two years. But underneath it there's a huge number of local elections that happen all the time. It's kind of hard to imagine that the federal government would come in and oversee Cincinnati's school board election. It only makes sense for Cincinnati and the state of Ohio to administer those Ohio elections. So it makes sense to have the sort of hybrid federal state system.

**Virginia Prescott:** [00:14:05] What do you think Victoria are the greatest threats to the right to vote today?

**Victoria Bassetti:** [00:14:11] I think that the greatest threats stem from the fact that voting is a means to power for people and people in power tend to want to maintain it.

[00:14:25] Which means that power is brought to bear on voting. So when you combine that instinct to control voting with the increasing ability of politicians and political parties to understand the data and the details and the minutiae of voter groups; their increasing ability to kind of slice and dice districts, slice and dice voting blocs, you now have the ability to use voter identification or set different polling places or polling times when people are allowed to vote or voter registration requirements. And now you have state legislators who are able to select their voters, as a court in North Carolina said, with surgical precision.

**Virginia Prescott:** [00:15:21] Victoria Bassetti, thank you very much for speaking with us.

**Victoria Bassetti:** [00:15:24] Thank you.

**Virginia Prescott:** [00:15:28] Victoria Bassetti. She's author of Electoral Dysfunction: A Survival Manual for American Voters. She's now fellow at the Brennan Center for Justice at NYU.

**Virginia Prescott:** [00:15:39] That is a wrap for today. But we want to let you know that our episode on DACA is featured this week on NPR One. Here's one way to participate in civic life. You can listen to that and all of our shows in the NPR One app. Download the app and follow Civics 101 to make sure you hear all of our episodes. And tell us you love us by hitting the "interesting" button on your screen. This episode was produced by Justine Paradis. Music from Broke for Free. I'm Virginia Prescott. Civics 101 is a production of New Hampshire Public Radio.