

extension of this principle to Congress' power to set such requirements for state and local elections. Literacy tests were unanimously banned on a showing of racial discrimination as were durational residency requirements. On the latter question the Court specified that it was not enunciating a principle of Congress setting requirements for state and local elections but stating "the right to interstate travel under the Fourteenth Amendment."

Justice Harlan's stinging dissent throughout this entire case also provides Constitutional precedent for the anti-Carter forces:

"While the right of qualified electors to cast their ballots and *to have their votes counted* was held to be a privilege of citizenship in *Ex Parte Yarbrough*, these decisions were careful to observe that it remained with the States to determine the class of qualified voters...The Privileges and Immunities Clauses do not react on the mere status of citizenship to enfranchise any citizen whom an otherwise valid state law does not allow to vote...Minors, felons, insane persons and persons who have not satisfied residency requirements are among those citizens who are not allowed to vote in most states. *Oregon v. Mitchell* at pp. 214.

"The consideration that has troubled me most in deciding that the 18 year old and residency provisions of this legislation should be held unconstitutional is whether I ought to regard the doctrine of *stare decisis* as preventing me from arriving at this result...were I to consider myself constricted by recent decisions holding the Equal Protection Clause of the Fourteenth Amendment reaches state electoral processes, I would...cast my vote with those who are of the opinion that the lowering of the voting age and the abolition of state residency requirements in presidential elections are within the ordinary legislative power of the Congress.

"In the annals of this Court few developments in the march of events have so imperatively called upon us to take a fresh hard look at past decisions, which could well be mustered in support of such developments, as do the legislative lowering of the voting age and, albeit to a lesser extent the elimination of state residential requirements in presidential elections. Concluding, as I have that such decisions cannot withstand constitutional scrutiny, I think it is my duty to depart from them rather than to lend my support to perpetuating their constitutional error in the name of *stare decisis*." (emphasis added)

Carter Vote Reform Brief — Constitutional Sections In Question

Article IV, Section 4: "The United States shall guarantee to every state in this Union a Republican form of government."

Article X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people."

Article I, Section 2: "The Electors (for Representatives) in each state shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Article I, Section 4: "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

By *Article V*, common law and the amendment process leading to the Fifteenth, Nineteenth, and Twenty-fourth Amendments in changing voting requirements, states may be deprived of their retained powers only with the concurrence of two-thirds of each House of Congress and three-fourths of the states. Opinion of Justice Harlan, *Oregon v. Mitchell*, 400 U.S. 112, 201 (1970).

Although Justice Harlan resorted to a state's rights defense in some aspects of this decision, the final paragraph shows that he marshalled these arguments in exasperation at the insurrectionary potential of this construction of the civil rights cases by the Democratic Party, the same construction Carter is utilizing to defend his direct democracy and vote fraud arguments. It is not accidental that the Trilateral Commission's Samuel P. Huntington was the Johnson Administration's legal representative in this case.

—by Barbara Boyd