Why Carter's Electoral Reforms Are Lawless

The history of voting rights litigation and legislation in the United States offers striking confirmation of the fact that President Jimmy Carter's proposed legislation for same-day universal registration is unconstitutional. An historical review also establishes that Carter's proposals combined with the activities of the Federal Elections Commission represent an insurrectionary attempt to impose national control of the election process in violation of the Constitution.

Carter and his Democratic Party supporters are using two recent Supreme Court decisions and the effective bribery of the states through Federal Election Commission funds to establish the constitutional principle that Congress can set voter qualifications.

The first Supreme Court case is *Buckley v. Valeo*, which upheld the constitutionality *in principle* of the Federal Election Commission. This precedent is not of issue here. The evidence necessary to investigate the illegal activities of the Federal Election Commission has already been provided to Congress. Once the FEC is investigated and its charter abrogated for unconstitutional and criminal activities, this precedent will assume its appropriate place in the political process.

The second case Carter Administration officials point to is *Oregon v. Mitchell* 400 U.S. 112 (1970), which upheld the Voting Rights Act of 1972 which established a national voting age.

The States' Rights Issue

Before these decisions and Carter's subsequent moves to legislate the means by which he stole the 1976 Presidential elections, there was no question that the right to determine voter qualifications rested with the states. Regulations and statutes concerning this right were, however, subject to strict scrutiny and upheld only if they demonstrated a compelling state interest.

The doubt which has arisen in Congress concerning the demonstrated unconstitutionality of Carter's proposals is based on the misdirected effort to fight the proposals on a strictly state's rights basis. The state's rights argument would utilize Article 1, Section 2 and Article 1, Section 4 of the U.S. Constitution and the body of precedent first enunciated in *Minor v. Happersatt* 88 U.S. (21 Wall), 162 (1875) (women's suffrage) to demonstrate that there is no federal constitutional *right* to vote. That right arises only when discrimination occurs or when the vote is diluted through fraud or discriminatory provisions.

A second premise of this argument would be that the Carter legislation should constitutionally take the form of an amendment. The common law arising out of Article V of the Constitution dictates that states may not be deprived of their retained powers without the concurrence of two-thirds of each House of Congress and three-fourths of the states. The changes in voting rights mandated by the Fifteenth, the Nineteenth, and the Twenty-Fourth Amendments all came into being as *amendments*. This indicates that even after substantial Fourteenth Amendment litigation on voting rights, constitutionalists in Congress still felt it necessary to alter voting procedures via the amendment process.

This line of argument, like most state's rights efforts, overlooks the insurrectionary point of the Carter proposals. Article X of the Constitution guarantees to the states and to the United States a Republican form of government.

The *intent* of the Carter proposals, at best, is to replace this form of government with direct democracy. Such an action is completely inimical to the fundamental concepts established by the founding fathers and enunciated in the Federalist Papers. The founding fathers rightly regarded direct democracy as opening the door to mass social control and manipulation which would ultimately destroy the nation. This is, in fact, Carter's object: the use of mass media manipulation and brainwashing to overcome the checks and balances instituted in the U.S. Constitution through the states and through the Congress for the imposition of a Trilateral Commission "technocratic" dictatorship.

The state's rights line of defense also totally ignores the supreme constitutional and historical irony of the Carter proposals. The federal power and the federal courts were first exercised in the election process specifically in order to prevent vote fraud. The history of federal voting rights litigation leading up to *Oregon v. Mitchell* and *Buckley v. Valeo* is replete with references to vote fraud as well as the denial of voting participation *to otherwise qualified* individuals. Under Jimmy Carter's electoral "reform" proposals, federal control would be imposed for the purposes of institutionalizing vote fraud.

Compelling State Interest And The Myth Of Voter Apathy

The federal courts throughout the nineteenth century were extremely hesitant to intervene in the electoral process and instructed Congress similarly. The case which opened the door to litigation under the Fourteenth amendment in voting rights expresses this summary caution:

"The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege not merely conceded by society according to its will, *under certain conditions*, nevertheless it is a fundamental political right because it is preservative of all other rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370. (emphasis added)

In fact the door to Fourteenth Amendment litigation is opened wide by the Conspiracy Law of 1870 and its accompanying Enforcement Act which were directed at the disenfranchisement of black voters and the *vote fraud* then rampant in the country. In *Ex Parte Siebold* the Supreme Court upheld the use of these laws to curb vote fraud by stating:

"In the light of recent history and of the violence, fraud, corruption, and irregularity which has prevailed in recent elections, the exertion of this power...may be necessary to the stability of our federal government." *Ex Parte Siebold*, 100 U.S. 371, 1880.

The *Siebold* line of cases, culminating in *U.S. v. Classic* in 1941 more than demonstrates the real purposes of Carter's program and explodes his argument on voter apathy. Carter's claim that the proposals will not lead to vote fraud because fraud will be made a felony likewise holds no water. Vote fraud is already a federal crime under 18 U.S.C. 241 and 242 which are modified versions of the Conspiracy and Enforcement statutes of 1870. The problem, as in the 1976 elections, is that the Justice Department has refused periodically to enforce these laws.

Voter participation, among other factors, had traditionally dropped in the United States when strict vote fraud laws were being enforced. This was the case from 1860 to 1880 when the Conspiracy and Enforcement statutes led to many prosecutions for fraud, particularly against the herding of immigrants by corrupt machines. Sen. Edward Kennedy (D-Mass) is fond of quoting elections from this period as the paradigm of American voter turnout. The 1876 election was the notoriously fraud-ridden Hayes-Tilden contest. In 1871, 101 percent of the voting population of North Carolina participated in elections.

The twentieth century has seen the use of the Fourteenth Amendment to prevent disenfranchisement of certain classes of voters, but the court has had a continuing federal balancing interest in preventing vote fraud. Justice Holmes in *U.S. v. Mosely*, 238 U.S., 383 (1915) continued the *Siebold* tradition by stating: "The right of suffrage under the constitution is not merely the right to cast the ballot but the right to have the ballot counted." *U.S. v. Classic* 313 U.S. 299, 1941 extended this principle to primary elections. *Baker v. Carr* and *Reynolds v. Simms* fall in this line insofar as "one man, one vote" prevents weighting and dilution of the vote.

Even following *Oregon v. Mitchell*, the precedent relied on by the Carter forces, the Supreme Court has upheld state laws which demonstrate an interest in an intelligent electorate, absent a discrimination clause, and requirements which prevent vote fraud. In *Rosario v. Rockefeller* 410 U.S. 752, the Court ruled against the Democratic Party-supported primary cross-over proposals: "It is clear that the preservation of the integrity of the electoral process is a legitimate and valid state goal." The same principle is outlined in support of literacy tests, absent a claim of discrimination in *Lassiter v. North Hampton Election Board*. In *Richardson v. Ramirez*, the Court upheld a California provision which disenfranchised California ex-felons.

The history of cases outlined above demonstrates that with the exception of *Buckley v. Valeo* and the bitterly split court in *Oregon v. Mitchell*, the law is totally against the Carter propositions.

A similar demonstration of compelling interest by the states may be had by those states which refuse to go along with the national proposals in upholding fraud sanctions. States not accepting FEC funds would be faced with the task of holding and administering two elections, one under state law, one under federal at state expense! The issue of vote fraud, rather than participation as the primary issue facing any election is more than expressed by the lead item in a 1941 Administration pamphlet for election officials issued by the Council of State Governments:

"Fundamental to any regularized and incorruptible method of election administration is a system of registration of eligible and qualified voters...A properly administrated program of registration will hold down to a minimum the number of fraudulent votes cast on election day."

The Insurrectionary Legal Props To The Carter Proposals

Through an insurrectionary construction on civil rights cases brought in this century, a construction which employs the definition of direct democracy rather than the Republic stipulated by the founding fathers, Democratic Party forces have succeeded in securing limited cooperation from the U.S. Supreme Court in efforts to stuff the ballot box. It is important to outline the history of the *Oregon v. Mitchell* and *Buckley v. Valeo* cases both to demonstrate the insurrectionary nature of the Carter proposals and to show the Congress that investigation into fraud and the 1974 Watergate of President Nixon will limit these precedents.

When the Supreme Court in *Lassiter* upheld literacy requirements for voting, the Johnson Administration pushed through the Voting Rights Act of 1970. Aside from admirable civil rights laws and a lawful extension of the Fourteenth Amendment the Act included the constitutionally questionable provisions of a nationwide 18-year-old voting requirement, the barring of literacy tests in state and federal elections, and the barring of residency disqualifications in presidential and vice-presidential elections with uniform rules for absentee voting procedures.

The Court split bitterly on the national 18-year-old requirement, 5 to 4 with five separate opinions upholding the right to set requirements in national elections. The Court held unconstitutional again, by a 5 to 4 vote, the

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.
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> "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.
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> "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