

# Under Siege

BY M. KELLY TILLERY

**D**emocracy is under siege in this nation. Not by ISIS, Khorasan, Al Qaeda, Ebola or Putin. Rather by an insidious domestic threat as serious as the internecine war that 150 years ago tested whether this nation or any nation conceived in liberty and dedicated to the proposition that all men are created equal could long endure.

Fortunately, this nation did endure that challenge to our democracy – at an astonishing price in blood and treasure. While that threat to the foundation of the republic was as open and blunt as possible, the modern equivalent is much more subtle, clever and thus, nefarious.

Some say that the infection of our electoral process by big (and dark) money permitted by *Citizens United v. FEC*, 558 U.S. 310 (2010) or the relentless systematic gerrymandering of congressional districts permitted by *Vieth v. Jubelirer*, 541 U.S. 947 (2004) alone or together are the greatest dangers to our sacred democracy. While each in its own way is reprehensible, and part of a larger, well-organized effort to prevent as many people as possible from voting one way, the most abhorrent threat is the nationwide effort to directly actually disenfranchise eligible voters. The most fundamental right in a democracy – the right to vote is, for millions, in grave danger.

Our history includes stunning examples of substantial enfranchisement, all by constitutional amendment remedying past disenfranchisements based upon certain criteria – 15th Amendment (1870) – “color, race, or condition of servitude”; 19th Amendment (1920) – “sex,” and 26th Amendment (1971) – “age” (18 years or older). And, of course, the 24th Amendment (1964) which prevented disenfranchisement “by reason of failure to pay any poll tax or other tax.” Each was required, along with scores of enabling acts and judicial decisions, because our system, while paying lip service to universal suffrage, has from its inception been undermined by a never-ending series of legal and extra-legal schemes to prevent certain groups from voting.

Not coincidentally, my own first effort to cast a ballot, here in Pennsylvania, met with the arcane and cumbersome laws designed to prevent young, liberal students from voting. I turned 18, voter-eligible, just a month before the 1972 McGovern-Nixon presidential contest wherein the war in Vietnam was the

central issue. Because I had resided in Pennsylvania for less than 90 days, I was caught between the parochial absentee voting requirements of my state of origin, Louisiana, and the restrictive residential requirements of my new home state, Pennsylvania. At the polls in Swarthmore, some haughty, blue-haired matron coldly told me I could go to court in Media, try to convince a judge that I should be able to vote, get an order and come back and maybe the polls would still be open. In my then naiveté, I actually thought Pennsylvania might be different than Louisiana. Not so much. I would have preferred a literacy test or a poll tax.



Modern voter suppression, dilution and disenfranchisement takes many and varied forms, all of which fit, however, into five categories (1) voter identification requirements, (2) time and location restrictions, (3) attacks on voter registration, (4) “purging” voter rolls and (5) barring felons from voting. Not to mention, also blocking meaningful immigration reform. The Disenfranchisers are as relentless as they are creative in finding new ways to legislate disenfranchisement. And, yes, they are here in the Commonwealth of Pennsylvania.

In 2008 a divided (6-3) U.S. Supreme Court upheld an Indiana voter suppression law requiring government-issued photo identification at the polls, holding that “even-handed restrictions” protecting the “integrity and reliability of the electoral process itself” pass constitutional muster. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). At least 16 states have such requirements and more are planned. It should not be surprising that this same “facially neutral” reasoning was used often by the court more than 100 years earlier to uphold a variety of legal disenfranchising statutes. And in 2013, an even more divided court (5-4), led by the new Four Horsemen (Roberts, Scalia, Alito and Thomas), emasculated The Voting Rights Act of 1965 reaching the tone deaf conclusion that “things had changed dramatically” and thus there was no longer a need for the federal government to approve voter restrictions in Southern states. *Shelby County v. Holder*, 557 U.S. 193 (2013) Au contraire, mes amis.

While litigation will always be an avenue to challenge the Disenfranchisers, we obviously cannot rely upon the courts

alone to protect our democratic system. This battle must also be fought at the state legislative level and, more importantly, in the court of public opinion. Frankly, we need to turn public opinion on this issue with the same astounding speed and thoroughness with which it has so recently changed on marriage equality.

If those pressing voter restrictions really believed in democracy and universal suffrage, they would instead enact laws designed to enfranchise, to encourage people to vote and to make it easier to do so. The truth is, of course, obvious – they do not want more people to vote because they fear, and rightfully so, that new and certain vulnerable groups of voters will not vote as they wish.

However, recent history teaches that the current electorate may not be quite as passionate about voting as our forebears or I. In the recent mid-term elections, only 36 percent of eligible voters voted. Which means about 19 percent of eligible voters determined the political fate of the nation for at least the next two years. And at least half of that 19 percent vote against their own economic interest being either deceived or distracted by the shiny objects of fear and extraneous emotional social issues. So, our “democracy” runs on the will of less than 10 percent of the electorate? Perhaps we get the government we deserve.

Lest you think this well-funded, comprehensive, coordinated national campaign of voter suppression could not possibly be successful in this country, see the U.S. Supreme Court’s Oct. 18, 2014 order in *Veasey v. Perry* (No. 14A393 and 14A404) which permitted Texas’ Voter I.D. law to take effect for the mid-term election – shades of things to come.

And, keep in mind, that the progenitors of today’s Disenfranchisers, Southern senators, congressmen and state legislators, by 1911 had repealed virtually all state and federal Reconstruction-era election laws and

enacted literacy tests, poll taxes, property tests, understanding tests, the white primary, grandfather clauses, stringent residency requirements and inconvenient places and times for registration and voting, (everything but “Voter I.D.” – a relatively recent, creative suppression tool), disenfranchising every black voter who had been enfranchised less than 50 years before by the 15th Amendment. It would take another 50 years and the passage of the 24th Amendment (1964) and The Voting Rights Act (1965) to begin to reverse these legal obscenities.

Although the Disenfranchisers shamelessly pretend to have the noble purpose of protecting the integrity of the process, all but the most blind and dense, including a few Supreme Court justices, do not see (or wish to see) through this ruse. However, as with so many on the wrong side of history, technology will overrun them. Secure online voting systems will one day enable every eligible voter to vote easily. We are quite creative when we want to be. The first patent of our most prolific inventor, Thomas Edison, was for an electromagnetic voting machine. (June 1, 1869, U.S. Pat. No. 90646A). We do virtually everything else online and there is no reason why we cannot devise and implement secure online voting systems that will finally make universal suffrage and democracy a reality in this country and end the disingenuous efforts of a powerful few to silence the votes of the powerless many.

Canada, Sweden, Switzerland, Latvia and Estonia have all had excellent experience with online voting. As we take pains to protect the Baltic states from the Russian Bear, perhaps we can also learn something from them and enfranchise millions via new technology. Right after we join the rest of the world (except also Liberia and Myanmar) and adopt the metric system. ■

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