



Taking Back Voting Rights by Hitting Offending States

By Little Big Zebra

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The 14th Amendment to the Constitution was placed into law in 1868 and has had profound impact upon the nation since. Mostly, the amendment is credited with preventing states from reducing liberties given by the constitution of life, liberty, property or due process. The amendment also is the place where those who commit insurrection against the nation are stripped of being a legislator.

The 14th amendment is the basis for seminal court cases fighting discrimination, legal representation, education and medical care. [Under the current composition of the Supreme Court, many of these rights, long having been settled law, are in jeopardy.]

Now, consider the 14th Amendment as a cure for the GOP frenzy to strip voters of their right to vote. Section 2 reveals the “Penalty Clause”. A state which is found to have “denied or any way abridged” its citizens from voting can become subject to forfeiting representation in the House of Representatives. If a state impedes 10% of its voters, it would lose 10% of its representatives, which would reduce the number of votes in the electoral college.

“Under the so-called penalty clause, it doesn’t matter how a state abridges the right to vote, or even why. The framers of the constitutional amendment worried that they would not be able to predict all the creative ways that states would find to disenfranchise Black voters. They designed the clause so that they wouldn’t have to. “No matter what may be the ground of exclusion,” Sen. Jacob Howard, a Republican from Michigan, explained in 1866, “whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the category of voters, and the State loses representation in proportion.”

That approach could come in handy for discouraging states from imposing more limits on voting, as the country witnesses what Adam Lioz, senior policy counsel at the NAACP Legal Defense Fund, calls “the greatest assault on voting rights since Jim Crow.”

There’s just one problem: The penalty clause isn’t being enforced — and never has been.” - Michael Linhorst. Politico 7/27/2022

<https://www.politico.com/news/magazine/2022/07/27/penalty-clause-voting-rights-00046973>

Jared Pettinato is a lawyer, a 43-year-old Montana native, filed suit late last year against the Census Bureau in D.C. federal court on behalf of a nonprofit he runs, Citizens for Constitutional Integrity.

“I think it’s more likely than any previous lawsuit I’m aware of to succeed in at least shifting one congressional seat,” says Thomas Berry, a research fellow at the Cato Institute who has written about the clause.

In the suit, Pettinato cites Wisconsin, where a 2011 law requires voter present a photo ID, but limits what form of ID is acceptable—a federal court concluded that law disenfranchised 300,000 registered voters. Other states of Arizona, Maryland, Mississippi, New Jersey, Ohio, Tennessee and Virginia would all gain at least one seat “if the Census Bureau fully applied the penalty”.

Texas and Georgia have recently added laws to intimidate voters in order to limit their ability to vote with limitations upon drop-boxes, ID requirements, closure of precinct voting sites in specific areas and even providing food or water to long lines of voters waiting to vote in highly concentrated precincts.

There is a glimmer of hope, yet there is a long way to go before Pettinato’s suit could even be acknowledged, let alone favorably litigated. And then there is Justice Alioto, who feels the penalty clause has to be considered within the entire concept of the 14th Amendment and would unduly penalize all the other voters in a state.

Per the NYU Law Review: *“This Article takes up that call and explains how the Penalty Clause is not only consistent with but also reinforces the Fourteenth Amendment’s broader commitment to universal representation. Contrary to common misconceptions about the Penalty Clause, the Clause is structured so that the state as a whole loses representation in Congress, but no individual within the state is denied representation. In other words, the Penalty Clause does not operate by subtracting those wrongfully disenfranchised from a state’s total population prior to congressional apportionment. Rather, it imposes a proportional reduction derived from the percent of the vote-eligible population denied the vote that is scaled to an offending state’s total population. The Penalty Clause thus does nothing to upend Section 2’s advancement of universal representation. If anything, the Penalty Clause actually reinforces Section 2’s commitment to that idea. By reducing a state’s representation proportionally, it contemplates the representational interests of nonvoters, a key feature of the universal representation theory.”*