

The 26th Amendment, Voting Age, and the Selective Service

Use of the military draft during the Vietnam War, and particularly the Selective Service process of inducting those who were 18 into combat, ultimately triggered the passage of the Twenty-Sixth Amendment which changed the Constitution's suffrage (voting) rules.

Article I, Section 2 of the Constitution initially allowed states effectively unlimited discretion in setting the rules for who could vote. Specifically, eligibility to vote for the House of Representatives—the only federal office citizens voted for in the original Constitution—would follow the same “qualifications requisite for electors of the most numerous Branch of the State Legislature.” In other words, the Constitution simply said that whatever eligibility rules the states used for their own state elections would also apply to federal House elections.

At the time of the Founding, most states restricted suffrage to land-owners or significant property holders, though this requirement faded quickly in the late 18th and early 19th centuries. Similarly, many states restricted suffrage to whites only. Other than New Jersey, which allowed single property-owning women to vote until 1807, suffrage was also restricted to men until states started expanding women's rights toward the end of the 19th and beginning of the 20th centuries. (Some states had earlier allowed women to vote in local or school elections, but not for state or federal elections). The Fifteenth Amendment in 1870 and Nineteenth Amendment in 1920 removed qualifications based on race or sex from those states could require.

Age, however, remained one of them, and most states set the general age of majority (that is, the age of legal adulthood) at 21, including voting among the rights one attained then.

Were 18 year-olds capable of making a mature, rational, and careful decision like voting? That question came to the forefront during the Vietnam War. The federal government required all males to sign up for Selective Service—eligibility for the draft—at 18. As a result, 18-to 20-year-old men were being drafted and sent to fight—even as the voting age in most states was 21.

This disparity resurrected an argument from the 1940s: if you are old enough to fight and even give your life for your country, then you are old enough to vote. At the time, the legal voting age in most states was 21. During World War II, Congressman Jennings Randolph introduced federal legislation to lower the voting age to 18, pursuant to Congress's ability to set rules for federal elections in Article I, Section 4, but he did not succeed in passing federal legislation doing so until 1970.

That was when Congress amended the Voting Rights Act (a law initially passed to enforce the Fifteenth Amendment's guarantee of racially-neutral suffrage) to require states to register 18 year-olds to vote.

But in 1970, in the case of *Oregon v. Mitchell*, the Supreme Court cited Article I, Section 2's reservation of suffrage rules to the states to narrow that act's scope. A splintered majority of the Court concluded that Congress's ability to set rules for federal elections could be used to set suffrage rules in those *federal* elections. But, the Court concluded, except where changed by specific constitutional amendments, the states, not Congress had the authority to establish voting eligibility in state elections.

So, just as had been done with classifications based on race in the Fifteenth Amendment and based on sex in the Nineteenth, Congress proposed an amendment setting a national rule based on age. Congress sent the amendment to the states on March 23, 1971; three-quarters of the states had ratified by July 1 of that year.

The new Twenty-Sixth Amendment held that “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

Although ratification was quick, the discussion did not end there; it continues today. There are some who argue that the age should be lowered to 16—and others who argue it should once more be raised to 21. (Similarly, others argued that the solution in Vietnam was not to lower the voting age but to restrict or end the military draft.)

Knowledge, maturity, and responsibility are often cited as factors relevant to deciding what the voting age should be, which recent events have only complicated. On the one hand, information is more accessible now than before, providing opportunities to learn about politics or to participate in marches or demonstrations or debates. On the other hand, far fewer young people are earning a living or living by themselves before 21 than in the past, so many may not have as much relevant life experience, and neuroscientists increasingly suggest brains have not finished developing until later, maybe even around 25. (This is one reason that the use of drugs by minors can be even more dangerous for minors than for adults, since disturbing that neurological development can cause permanent harm).

What do you think? Should it be left at 18? Lowered to 16? Restored to 21? Or should the Selective Service requirements (all males 18-25) be modified to change who is subject to a draft, if at all?