AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 12: The Contemporary Era – Democratic Rights/Voting/Right to Vote

**Raysor v. DeSantis, \_\_\_ U.S. \_\_\_** (2020)

*Bonnie Raysor was convicted of a felony in Florida. She served an eighteenth month sentence and was released in late 2011. In 2018, Florida voters pass a constitutional amendment granted all felons who had fully served their sentences the right to vote. The Florida legislature than passed a bill declaring sentences would not be considered fully served until the convicted felon paid all fines, fees and restitution. Raysor, who owed a little less than $5,000, filed a lawsuit against Ron DeSantis, the Governor of Florida. She claimed that the legislation requiring her o pay all fees violation the equal protection and due process clauses of the Fourteenth Amendment, and the ban on poll taxes in the Twenty-Fourth Amendment. The local district court issued an injunction forbidding Florida to implement that law, but that injunction was overturned without opinion by the Court of Appeals of the Eleventh Circuit. Raysor appealed to the Supreme Court of the United States.*

 *The Supreme Court of the United States by a 6-3 vote refused to intervene. The judicial majority did not issue an opinion. Justice Sotomayor’s dissent claimed that the injunction should be lifted because the case was likely to be reviewed by the Court and because the lower court’s decision was wrong. Is Sotomayor correct that this is a clear case for constitutional relief? If so, why did five justices on the Supreme Court disagree. Compare* Raysor v. DeSantis *with Republican National Committee v. Democratic National Committee* (2020). *Is Sotomayor correct when she charges the judicial majority with inconsistency in enforcing voting rights. Might the liberals on the court be as inconsistent? Who, if any faction, is consistent and why?*

The application to vacate stay presented to Justice THOMAS and by him referred to the Court is denied.

Justice [SOTOMAYOR](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=Idca90439c1ef11eabea4f0dc9fb69570&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=Idca90439c1ef11eabea4f0dc9fb69570), with whom Justice [GINSBURG](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0224420501&originatingDoc=Idca90439c1ef11eabea4f0dc9fb69570&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=Idca90439c1ef11eabea4f0dc9fb69570) and Justice [KAGAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=Idca90439c1ef11eabea4f0dc9fb69570&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=Idca90439c1ef11eabea4f0dc9fb69570) join, dissenting from denial of application to vacate stay.

This Court’s order prevents thousands of otherwise eligible voters from participating in Florida’s primary election simply because they are poor. And it allows the Court of Appeals for the Eleventh Circuit to disrupt Florida’s election process just days before the July 20 voter-registration deadline for the August primary, even though a preliminary injunction had been in place for nearly a year and a Federal District Court had found the State’s pay-to-vote scheme unconstitutional after an 8-day trial. . . .

This case implicates the “ ‘fundamental political right’ to vote.” *Purcell v. Gonzalez* (2006) . . .

 . . . .

. . . . The Court may vacate an appellate court stay where (1) the case “could and very likely would be reviewed here upon final disposition in the court of appeals,” (2) “the rights of the parties ... may be seriously and irreparably injured by the stay,” and (3) “the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay.” . . .

This case easily meets the first two . . . prongs. By the District Court’s count, “nearly a million” persons are barred from voting because of Florida’s alleged wealth discrimination, inscrutable processes, and tax. A case implicating the franchise of almost a million people is exceptionally important and likely to warrant review. And there is no question that these people would suffer irreparable harm were they denied the vote or “incentiv[ized] to remain away from the polls” because of the Eleventh Circuit’s conflicting orders or Florida’s threat of prosecution. . . .

As for the third prong, the Eleventh Circuit was “demonstrably wrong in its application of accepted standards in deciding to issue the stay. The Court of Appeals not only failed to defer to the District Court’s factual findings, but it also appears to contradict its prior view of the plaintiffs’ equal protection claims. For starters, the District Court made extensive “factual findings to which the Court of Appeals owed deference,”  including that Florida’s pay-to-vote scheme overwhelmingly affects the indigent and is intended to fund state services regardless of any person’s criminal culpability. The Eleventh Circuit’s “bare order” staying the District Court’s decision does not “provide any factual findings or indeed any reasoning of its own,” and “[t]here has been no explanation given by the Court of Appeals showing the ruling and findings of the District Court to be incorrect.” . . . Precisely because the District Court’s decision . . . tracked the Eleventh Circuit’s decision . . . , the stay upends the legal status quo nearly a year after the preliminary injunction took effect. . . . No doubt tens of thousands of Floridians with felony convictions have already registered to vote: That is precisely what [the previous decision] said they could do. The State even admitted at trial that 85,000 registrations needed screening based on prior felony convictions (including eligibility involving LFOs).  Those who registered in reliance on the preliminary and permanent injunctions will remain on the voter rolls despite the Eleventh Circuit’s stayYet because of the Eleventh Circuit’s decision, these voters will have no notice of their potential ineligibility or the resulting criminal prosecution they may face for failing to follow the abrupt change in law. Making matters worse, the Eleventh Circuit will not hear argument on this case until August 18, the day of the primary election.

In short, the plaintiffs have raised serious claims, some of which the Eleventh Circuit already found likely to succeed. Because the parties’ rights and the legal framework had been well established, it was error to for the Eleventh Circuit to reverse course in an unexplained stay order right before an election.

This Court’s inaction continues a trend of condoning disfranchisement. Ironically, this Court has wielded [*Purcell*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2010490743&pubNum=0000780&originatingDoc=Idca90439c1ef11eabea4f0dc9fb69570&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) as a reason to forbid courts to make voting safer during a pandemic, overriding two federal courts because any safety-related changes supposedly came too close to election day. See *Republican National Committee* v. *Democratic National Committee* (2020). Now, faced with an appellate court stay that disrupts a legal status quo and risks immense disfranchisement—a situation that [*Purcell*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2010490743&pubNum=0000780&originatingDoc=Idca90439c1ef11eabea4f0dc9fb69570&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))sought to avoid—the Court balks.

I respectfully dissent.