

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era – Democratic Rights/Voting

Capen v. Foster, 12 Pick. 485 (MA 1832)

Joseph Capen resided in the seventh ward of Boston. He regularly paid taxes and otherwise met the qualifications set out in the state constitution to vote in state elections. In 1821, the Massachusetts legislature passed a statute requiring that the mayor and alderman in Boston make a list of all persons in that city eligible to vote. Persons not on that list were not allowed to cast ballots. For unknown reasons, Capen was not placed on that list in 1831. When he attempted to vote on April 4, 1831, Samuel Foster, a local inspector of elections, refused to let him cast a ballot. Capen sued Foster. He claimed that the Massachusetts voter registration law violated his right to vote.

The Supreme Judicial Court of Massachusetts declared that the voting registration law was consistent with the right to vote. Chief Justice Shaw ruled that voting registration was a reasonable means for determining whether voters actually met the state qualifications for voting. Why does Shaw reach that conclusion? Given that no actual dispute existed that Capen met the qualifications for voting on April 4, did he have a state constitutional right to cast a ballot?

CHIEF JUSTICE SHAW delivered the opinion of the Court.

...
[T]his Court is of opinion, that in all cases, where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner, in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power, to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as, under the pretence and color of regulating, should subvert or injuriously restrain the right itself.

...
The right of any individual person, claiming the privilege of voting, may involve an inquiry into the fact of citizenship, sex, age, domicile within the Commonwealth, domicile within the town or district, the payment of taxes, exemption by law from the payment of taxes, and the fact of his being a pauper or under guardianship, or otherwise. All these are questions of fact, open to proof of various kinds, and sometimes, though rarely, requiring considerable research and investigation. Is there any thing in the . . . constitution which requires the selectmen to go through this investigation during the progress of the polling, and whilst many other citizens, whose right is unquestioned, and proved by their names being previously entered on the list, are waiting to give in their ballots and retire? There is no express requirement, and we think there is no implication, arising either from the terms of the constitution or from the nature and purposes of the right of voting, which obliges the selectmen to perform this duty, whilst in the actual performance of other positive duties, required by the express direction of the constitution, and in the careful, exact and prompt performance of which, the public, the whole body of qualified voters, have a deep interest.

The constitution, by carefully prescribing the qualifications of voters, necessarily requires that an examination of the claims of persons to vote, on the ground of possessing these qualifications, must at

some time be had by those who are to decide on them. The time and labor necessary to complete these investigations must increase in proportion to the increased number of voters; and indeed in a still greater ratio in populous commercial and manufacturing towns, in which the inhabitants are frequently changing, and where of necessity many of the qualified voters are strangers to the selectmen.

If then the constitution has made no provision in regard to the time, place and manner, in which such examination shall be had, and yet such an examination is necessarily incident to the actual enjoyment and exercise of the right of voting, it constitutes one of those subjects, respecting the mode of exercising the right, in relation to which it is competent to the legislature to make suitable and reasonable regulations, not calculated to defeat or impair the right of voting, but rather to facilitate and secure the exercise of that right.

And this Court is of opinion, that the provision in the general law regulating elections, and that in the act incorporating the city, which require that the qualifications of voters shall be previously offered and proved, in order to entitle them to vote, that their names shall be entered upon an alphabetical register or list of voters, is highly reasonable and useful, calculated to promote peace, order and celerity in the conduct of elections, and as such to facilitate and secure this most precious right to those who are by the constitution entitled to enjoy it; that it cannot be justly regarded as adding a new qualification to those prescribed by the constitution, but as a reasonable and convenient regulation of the mode of exercising the right of voting, which it was competent to the legislature to make; and therefore that these legal enactments, not being repugnant to the constitution, are valid and binding laws, to which both voters and presiding officers at elections, are authorized and bound to conform.



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