Supplementary Material

Chapter 7: The Republican Era—Equality/Gender

People ex rel. Ahrens v. English, 139 Ill. 622 (1892)

Mary Ahrens claimed she had a right to cast a ballot in a Chicago school board election under an 1891 Illinois law that declared "any woman of the age of twenty-one years and upwards" who met other conditions "shall be entitled to vote" in "any election for the purpose of choosing any officer of schools." William English, a member of the board of elections commissioners, nevertheless refused to give Ahrens a ballot. He claimed that new voters could be enfranchised only by constitutional amendment. Ahrens asked the Supreme Court of Illinois for a writ of mandamus, requiring English to permit her to vote.

The Supreme Court of Illinois unanimously ruled Ms. Ahrens was constitutionally barred from voting. State constitutional provisions limiting the ballot to men, they ruled, could be altered only by constitutional amendment. Reread earlier sections on voting. Was this an established principle or new rule of law? Was this a sound interpretation of the Illinois Constitution? Why do you think the Supreme Court of Illinois (and the Supreme Court of Michigan in a similar case) reached the conclusion that a state legislature could not enfranchise women?

JUSTICE BAKER

. . . There are three classes of persons "mentioned" in [the state constitutional provision detailing voting rights], *i. e.*, those who were electors in the state on April 1, 1848; those who, prior to January 1, 1870, obtained certificates of naturalization from any court of record in this state; and male citizens of the United States above the age of 21 years. No averments are made in the petition that show, or even claim, that the petitioner belongs to either the first or the second of these classes. Indeed, it is plain, both as matter of law and matter of history, that there are no women who were electors in this state on the 1st day of April, 1848, and it is at least improbable that there are any women in the state who are included within the second of said designated classes. . . . The qualifications prescribed for a voter of the third class are three,—the voter must be a citizen of the United States, a male, and above the age of 21 years.

. . .

[Section 5 or article 8 of the state constitution] provides, not only that the qualifications, powers, duties, compensation, and term of office of a county superintendent of schools should be prescribed by laws, but also that the "time and manner of election" of such superintendent "shall be prescribed by law." What is meant by the expression "manner of election?" Was it intended thereby to give to the legislature the power of prescribing the qualifications which would entitle persons to vote at an election for such county superintendent? The word "manner" is usually defined as meaning way of performing or exercising; method; custom; habitual practice, etc. Said word is used in several different instances in the constitution in connection with the matter of elections. In section 7 of article 10 it is provided: "The county affairs of Cook county shall be managed by a board of commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from towns outside of said city, in such manner as may be provided by law." It will hardly be contended that by virtue of the words, "in such manner as may be provided by law," it would be competent for the legislature to enact that at elections in Cook county for the members of the board of county commissioners either all women of the age of 21 years, or all aliens who have declared their intentions to become citizens of the United States, may vote. . . . We think that the word "manner," found, in section 5 of article 8 of the constitution, should receive like

interpretation . . . and that said word in article 5 indicates merely that the legislature may provide by law the usual, ordinary, or necessary details required for the holding of the election.

. . . In Cooley's *Constitutional Limitations* (page 599) it is said: "Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment of the constitution. . .". [I]t is useless to multiply citations, for the books and the opinions in deciding cases are full of like statements of the law. We understand the law to be as is stated in the above quotation, and that such law is applicable, at least, in all cases of an election held for an officer who is mentioned or provided for in the constitution, unless it is indicated by that instrument that such officer may be otherwise elected or appointed, or that the legislature or some other body may determine by whom such officer may be elected or appointed. It may be that it is competent for the legislature to provide that women who are citizens of the United States, and over 21 years of age, may vote at elections held for school directors and other school officers who are not mentioned in the constitution; but that question is not before us for decision, and we therefore express no opinion in regard to it. We think, however, since the petitioner is not included within either the first or second classes of qualified voters mentioned in the constitution, and, being a woman, does not fall within the third class, *i. e.*, of male citizens of the United States above the age of 21 years, that the legislature had and has no power or authority to invest her with the right to vote at any election held for a county superintendent of schools.