



Written by [Kurt Hyde](#) on June 28, 2010

## Federal Court Orders Port Chester, New York, to Implement New Voting Methods

The voters of Port Chester, New York, went to the polls on Tuesday, June 15 using cumulative voting and early voting. They did so because the Village of Port Chester was ordered to do so by a federal court. According to Amy Ngai of FairVote, this was the first time such methods of voting were used in the State of New York.



This change in voting methods was in response to a lawsuit filed in 2006 by the U.S. Department of Justice claiming Port Chester's at-large method of voting had diluted the voting strength of Latino voters. According to the NYTimes.com coverage of the election, Latinos comprise 49 percent of the approximately 28,000 residents of Port Chester, although not all of them are U.S. citizens.

"Cumulative voting" is a method of voting that is used when there is more than one winner in a contest, such as a board of trustees with six members to be elected. Under cumulative voting in this example, each voter gets to cast six votes, but not necessarily for six different candidates. He can vote for six different candidates, cast all six votes for one candidate, or any combination in between just as long as he casts no more than six votes for that contest.

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"Early voting" is where voters can cast their ballots before election day, such as a week or two before election day. Early voting has two major security flaws: 1) It enables repeater voters, people who cast multiple ballots using fraudulent voter registrations, to easily increase the number of times in which they vote early and vote often while maintaining a low profile to avoid arousing suspicion, and 2) As it is with absentee ballots, the longer the ballots lie dormant waiting for election day, the more opportunity there is to tamper with the ballots or invade the voters' privacy by reading them. Invasion of the voters' privacy can run the gamut from just plain nosiness to intimidation tactics to ensure voters vote as they are instructed. This can play a vital role in enabling election fraud in those cases where people sell their votes or in cases where people have political patronage jobs that come with under-the-table requirements that they, and even sometimes their deceased or fictitious relatives, vote for specific candidates who are part of political machines.

The most important concern here is not so much the methods of voting, but the proper roles of the federal and state governments. There is nothing inherently wrong with cumulative voting nor with at-large voting. Also, there is nothing wrong with early voting providing there are proper safeguards to keep the ballots from being tampered with while they wait to be counted and safeguards to prevent



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repeater voting. The concern is separation of powers of government.

When the U.S. Constitution was being ratified, numerous states expressed concern over Article I, Section 4 which states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

The Anti-Federalists were so concerned about this clause that they proposed a constitutional amendment which stated: "That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same." (*Anti-Federalist Papers*, page 224)

With those evident concerns, why wasn't the Anti-Federalists' amendment passed? That's because the intent of this portion of the U.S. Constitution was explained in a number of writings by the Founding Fathers. Alexander Hamilton wrote in the *Federalist Papers*, no. 59: "They have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety."

Hamilton added later in the same *Federalist Paper*: "Suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular states, would any man have hesitated to condemn it, both as an unwarrantable transposition of power and as a premeditated engine for the destruction of the State governments?"

Adding support to Alexander Hamilton's explanation is the fact that this grant of power is in Article I, Section 4 and uses the phrase "Congress may" rather than being included amongst the continuing powers listed in Article I, Section 8 where the wording states "Congress has the power to."

Alexander Hamilton's explanation has served for many years as the explanation of the intent of Article I, Section 4 of the U.S. Constitution. Unfortunately, today, Alexander Hamilton's explanation has been forgotten or ignored.

Another concern about this ruling is that it is based on the outcome of the election rather than on the manner in which the elections are conducted.

The 15th Amendment states: "The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

This is clearly a statement of individual rights and not one of group rights and certainly not an empowerment to rule on an election based on the outcome. Many constitutionalists have expressed concern about the numerous unconstitutional questions in the latest census. You might recall that ethnicity was one of them. If this decision is left unchallenged, we may see even more lawsuits comparing ethnic statistics to election results.

The New York State Legislature will need to deal with this issue. Will they assert their state's right to conduct elections based on individual rights and their assessment of whether or not early voting can be conducted without inviting election fraud? Or will they feel compelled to rewrite New York's election laws based on this decision? Only time will tell.



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