

The Twenty-Sixth Amendment and Reduction of the Voting Age (Part 6): Unresolved Issues

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This Legal Sidebar post is the last in a six-part series that discusses the [Twenty-Sixth Amendment to the Constitution](#), which prohibits the federal and state governments from denying or abridging, on the basis of age, the voting rights of U.S. citizens who are at least 18 years old. The Amendment effectively lowered the minimum voting age to 18 for all federal, state, and local elections. Recent questions about the Twenty-Sixth Amendment's scope arose during the [COVID-19 pandemic](#) when litigants challenged state laws allowing older voters to cast an absentee ballot by mail upon request, without having to claim that they fell within a specific category of voter entitled to that privilege. These litigants argued that newly enacted state laws were inconsistent with the Twenty-Sixth Amendment rights of younger voters. The U.S. Courts of Appeals for the [Fifth](#) and [Seventh Circuits](#) rejected these challenges.

Because Congress may play a role in implementing the Twenty-Sixth Amendment, understanding the Amendment's history and drafting may assist Congress in its legislative activities. This Sidebar post explores unresolved issues related to the Twenty-Sixth Amendment's scope. Other Sidebars in this series provide an [overview](#) of the Twenty-Sixth Amendment; discuss the [history of voter age qualifications in the United States](#) and the [Supreme Court's 1970 decision in *Oregon v. Mitchell*](#); and examine the Amendment's [drafting in Congress](#). Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#) and in a [CRS Legal Sidebar post](#).

The Scope of the Twenty-Sixth Amendment

The Supreme Court has not decided any cases interpreting the Twenty-Sixth Amendment. However, lower federal courts and state courts have grappled with questions about the scope of the Amendment's prohibitions on laws, policies, or practices that “deny” or “abridge” adult citizens’ voting rights on the basis of age. (Under the Constitution, states have [principal authority](#) for regulating the “Times, Places and Manner of holding Elections,” subject to congressional override.) These lower court decisions help to elucidate issues that the Supreme Court has not addressed. For example, shortly after the Twenty-Sixth Amendment's ratification, [several lower courts considered](#) whether the Amendment prohibits state officials from declining to register persons at least 18 years of age, who are otherwise eligible to vote, at the place where they actually reside, such as a college campus, rather than where their parents live.

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Beyond securing young citizens' voting rights, lower courts have also considered whether the Twenty-Sixth Amendment protects youth participation in various other aspects of the political process. For example, lower courts have addressed whether the Twenty-Sixth Amendment grants otherwise qualified persons between 18 and 20 years of age the right to [hold elective public office](#); [serve on juries](#); and [participate in the initiation of legislation](#) through a state's referendum process by signing and circulating initiative petitions. Lower courts [have also examined](#) whether the Amendment requires states to allow persons under 18 to participate in primary elections when they will be 18 years old at the time of the general election. In the 21st century, [lower court decisions](#) addressed whether a state may make it easier for adult voters in a particular age group (e.g., adults over the age of 65) to vote without abridging the Twenty-Sixth Amendment rights of other age groups of adult voters.

Because there is no Supreme Court precedent interpreting the Twenty-Sixth Amendment, lower courts have varied as to how to evaluate laws that allegedly "deny" or "abridge" adult citizens' voting rights on account of age. In the decade after the Amendment's ratification, lower courts [often applied](#) strict scrutiny to election laws that were found to impose significant burdens on Twenty-Sixth Amendment rights. However, during the 21st century, courts have [not definitively identified](#) the proper analytical framework for considering claims that a law violates the Twenty-Sixth Amendment (e.g., rational basis review or a heightened standard of review). Some lower courts [have required](#) plaintiffs to show that state legislators intentionally deprived them of their right to vote on the basis of age by applying a [test](#) from the Supreme Court's Fourteenth Amendment Equal Protection Clause jurisprudence. Other lower courts have applied a [balancing test](#) that weighs a state's asserted nondiscriminatory governmental interests for a particular restriction (e.g., fraud prevention) against an individual's voting rights.

The scope of Congress's power to enforce the Twenty-Sixth Amendment under Section 2 against state laws or practices that "deny" or "abridge" voting rights of persons in specific age groups is also unclear. [Legislation introduced](#) in recent Congresses would have sought to rely on Congress's Section 2 enforcement power to create a private right of action for enforcing Twenty-Sixth Amendment rights; pre-register minors 16 or older to vote in federal elections; and require state and local jurisdictions to accept certain student identification cards for purposes of voter ID laws, among other things.

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