



4-1-2021

## Voter Suppression: A Recent Phenomenon or an American Legacy?

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### Recommended Citation

DuBose, Renalia (2021) "Voter Suppression: A Recent Phenomenon or an American Legacy?," *University of Baltimore Law Review*. Vol. 50 : Iss. 2 , Article 2.

Available at: <https://scholarworks.law.ubalt.edu/ublr/vol50/iss2/2>

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**VOTER SUPPRESSION: A RECENT PHENOMENON OR AN AMERICAN LEGACY?**

**Renalia Du Bose\***

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## I. RECENT EXAMPLES OF STATE-LEVEL VOTER SUPPRESSION

On February 1, 2018, Judge Mark Walker of the United States District Court for the Northern District of Florida declared Florida's voter restoration system for former felons to be a violation of the First and Fourteenth Amendments.<sup>1</sup> Florida's method of implementing the restoration of voting rights was not always as restrictive as the one struck down by Judge Walker.<sup>2</sup> John Ellis Bush, Charlie Crist, and Richard Scott are all former governors of Florida who served from 1999–2007, 2007–2011, and 2011–2019, respectively.<sup>3</sup> During his eight years as Governor, Bush granted clemency to approximately 75,000 former felons, and Crist granted clemency to approximately 150,000 former offenders during his four-

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1. *Hand v. Scott*, 288 F. Supp. 3d 1289, 1306 (N.D. Fla. 2018).
2. See Fred Grimm, *Florida 2019 Poll Tax Keeps the Streak Alive: 151 Years of Voter Suppression*, SUN-SENTINEL (May 17, 2019, 4:52 PM), <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-grimm-poll-tax-streak-alive-voters-20190517-zopaxup4znb5rjfzgjlk2gd52m-story.html> [<https://perma.cc/C3DC-UZAL>].
3. *Florida Governors*, FLA. DEP'T STATE, <https://dos.myflorida.com/florida-facts/florida-history/florida-governors> [<https://perma.cc/DY3E-YHDD>] (last visited Dec. 31, 2020).

year tenure.<sup>4</sup> Scott granted clemency to 2,898 former felons during his eight years in office.<sup>5</sup>

In 2018, Florida, Kentucky, and Iowa were the only three states with lifetime prohibitions on felons voting.<sup>6</sup> In Florida, the restoration of voting rights for felons is governed by the following constitutional and statutory provisions:

**Article 6, Section 4. Disqualifications.**

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of the sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.<sup>7</sup>

**Article 4, Section 8. Clemency.**

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.<sup>8</sup>

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4. See Grimm, *supra* note 2.

5. Jane C. Timm, *Florida's Process for Restoring Voting Rights to Felons Ruled Unconstitutional*, NBC NEWS, <https://www.nbcnews.com/politics/politics-news/florida-s-process-restoring-voting-rights-felons-rules-unconstitutional-n844096> [https://perma.cc/6PDE-KFS8] (Feb. 2, 2018, 2:27 PM).

6. Tim Elfrink, *Florida Voters Can Finally Kill Racist, 150-Year-Old Felon Voting Ban*, MIAMI NEW TIMES (Jan. 23, 2018, 11:42 AM), <https://www.miamiherald.com/news/florida-voters-can-kill-racist-felon-voting-ban-on-november-ballot-10019784> [https://perma.cc/9ULY-JJT6].

7. FLA. CONST. art. VI, § 4 (amended 1992).

8. FLA. CONST. art. IV, § 8 (amended 1998).

**Title XLVII, Section 944.292. Suspension of civil rights.**

(1) Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution. Notwithstanding the suspension of civil rights, such a convicted person may obtain restoration of his or her voting rights pursuant to s. 4, Art. VI of the State Constitution and s. 98.0751.<sup>9</sup>

Thus, in Florida, the Governor has the discretion to restore the civil rights of former felons, including the right to vote.<sup>10</sup> The Rules of Executive Clemency provide the specifics regarding the restoration of voting rights for former offenders in Florida and grants the governor “unfettered discretion to deny clemency at any time, for any reason.”<sup>11</sup> “The discretion of the clemency board . . . has been in place for decades and overseen by multiple governors.”<sup>12</sup> In 2011, Governor Scott reversed the policy of restoring the civil rights of former felons—which excluded sex offenders and murderers—without an application and a hearing, a system that was put into place by previous Governor Charlie Crist.<sup>13</sup> In March 2011, Governor Rick Scott and members of his Cabinet voted unanimously to amend the Rules of Executive Clemency by making it more difficult for former felons to regain the right to vote, including the requirement that nonviolent offenders wait five years after the conclusion of their sentence before applying to have their civil rights restored.<sup>14</sup>

In February 2018, Florida had approximately 1.5 million former felons who were eligible to seek the restoration of their right to vote when the Executive Clemency Board consisted of Governor Scott,

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9. FLA. STAT. § 944.292 (2019).

10. *See id.*

11. FLA. R. EXEC. CLEM. 1, 3–4 (effective Mar. 9, 2011), [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) [<https://perma.cc/QJ7E-YLRZ>].

12. Steve Bousquet, *Judge Strikes Down Florida’s System for Restoring Felons’ Voting Rights*, TAMPA BAY TIMES, <https://www.tampabay.com/florida-politics/buzz/2018/02/01/federal-judge-strikes-down-floridas-system-for-restoring-felon-voting-right-s/> [<https://perma.cc/3WLC-CFWD>] (Feb. 3, 2018).

13. Scott Neuman, *Voting Rights Process for Florida Felons Unconstitutional, Judge Says*, NPR (Feb. 2, 2018, 3:09 AM), <https://www.npr.org/sections/thetwo-way/2018/02/02/582600802/voting-rights-process-for-florida-felons-unconstitutional-say-judge> [<https://perma.cc/T5JZ-9J4J>].

14. *See id.*

Attorney General Pam Bondi, Chief Financial Officer Jeff Atwater, and Agriculture Commissioner Adam Putnam.<sup>15</sup> The Executive Clemency Board under Governor Scott's administration met four times a year and typically heard fewer than one-hundred cases per session.<sup>16</sup> In December 2017, 10,264 applications of former felons seeking restoration of their voting rights were pending with the Executive Clemency Board.<sup>17</sup> In *Hand v. Scott*, decided on February 1, 2018, Judge Walker opined that the "unfettered discretion in restoring voting rights" was unconstitutional.<sup>18</sup> The suit in that case was filed by a group of former felons whose clemency applications had been denied, with support from the Fair Elections Legal Network.<sup>19</sup> In April 2018, the case was presented on appeal to the United States Court of Appeals for the Eleventh Circuit and arguments were heard in July of that year.<sup>20</sup>

While the issue of restoration of voting rights for former felons was making its way through the federal courts, a grassroots effort to amend the Florida Constitution came to fruition in early 2018.<sup>21</sup> Desmond Meade, Chairman of Floridians for a Fair Democracy, led an effort which garnered more than the required 766,200 signatures to have the issue placed on the November 2018 ballot.<sup>22</sup> Meade's efforts, financed primarily by the American Civil Liberties Union and other major contributors, were motivated by the fact that he was a former felon and law school graduate who was unsuccessful in having his voting rights restored.<sup>23</sup> The Voting Restoration Amendment came to be known as "Amendment 4," and was designed to automatically restore the voting rights of former felons who have completed their sentences, parole, probation, and

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15. Gray Rohrer, *Gov. Scott Defends How State Restores Voting Rights of Felons*, ORLANDO SENTINEL (Feb. 12, 2018, 6:20 PM), <https://www.orlandosentinel.com/politics/os-rick-scott-felon-voting-20180212-story.html> [https://perma.cc/339J-XNVM].

16. Bousquet, *supra* note 12.

17. Timm, *supra* note 5.

18. 285 F. Supp. 3d 1289, 1292 (N.D. Fla. 2018).

19. Timm, *supra* note 5.

20. *Hand v. Scott*, 888 F.3d 1206 (11th Cir. 2018).

21. See Dara Kam, *Felons' Rights Proposal Goes on November Ballot*, TALLAHASSEE DEMOCRAT (Jan. 23, 2018, 2:55 PM), <https://www.tallahassee.com/story/news/politics/2018/01/23/felons-rights-proposal-goes-november-ballot/1058885001/> [https://perma.cc/DK7Y-7P9J].

22. *Id.*

23. *Id.*

restitution requirements.<sup>24</sup> As presented to the voters, the aforementioned wording of Article VI, Section 4 of the Florida Constitution remained unchanged; however, Article IV Section 8 was amended.<sup>25</sup> Per the Florida Division of Elections' Ballot Summary, the Proposed Amendment 4 did not apply to convicted murderers or sexual offenders who would continue to be prohibited from voting unless the Governor and their Cabinet restored their rights.<sup>26</sup>

Amendment 4 was approved by 64.6% of voters, representing 5.2 million Florida voters; however, Governor Ronald DeSantis, elected during the November 2019 general election, declared before his inauguration that Florida lawmakers would develop "implementing language" to administer the new amendment.<sup>27</sup> The "implementing language" became law on July 1, 2019 and requires former felons to pay all court fees and fines, plus restitution to victims before having their voting rights restored.<sup>28</sup> Additionally, Florida's voter registration form, which previously asked new voters if they were felons, was changed to three questions.<sup>29</sup> Many advocates, including the American Civil Liberties Union, complained that the new questions are confusing, and the payment requirement is an unconstitutional poll tax.<sup>30</sup> Numerous lawsuits have been filed by former felons seeking restoration of their voting rights.<sup>31</sup>

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24. *Id.*

25. See FLA. CONST. art. IV, § 8 (amended 1998); see also *Florida 2018 Ballot Measures*, BALLOTPEdia, [https://ballotpedia.org/Florida\\_2018\\_ballot\\_measures](https://ballotpedia.org/Florida_2018_ballot_measures) [https://perma.cc/T8VY-VN4N] (last visited Dec. 31, 2020).

26. FLA. DIV. OF ELECTIONS, PROPOSED CONSTITUTIONAL AMENDMENTS AND REVISIONS FOR THE 2018 GENERAL ELECTION 10 (2018), <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> [https://perma.cc/PXU6-NFKT].

27. Michael Van Sickler, *Ron DeSantis Says Amendment 4 Should be Delayed until He Signs Bill from Lawmakers*, TAMPA BAY TIMES, <https://www.tampabay.com/florida-politics/buzz/2018/12/13/ron-desantis-says-amendment-4-should-be-delayed-until-he-signs-bill-from-lawmakers/> [https://perma.cc/Q2VZ-WAJV] (Dec. 13, 2018).

28. *Id.*; see also Forrest Saunders, *New Florida Laws That Go into Effect July 1, 2019*, ABC ACTION NEWS: WFTS TAMPA BAY, <https://www.abcactionnews.com/news/state/new-florida-laws-that-go-into-effect-july-1-2019> [https://perma.cc/2EGS-R46L] (July 1, 2019, 10:23 AM) (providing implementing language).

29. See PROPOSED CONSTITUTIONAL AMENDMENTS AND REVISIONS FOR THE 2018 GENERAL ELECTION, *supra* note 26, at 10–11.

30. Lawrence Mower, *Florida's Amendment 4 Legislation is a Mess, Felons and County Officials Testify*, TAMPA BAY TIMES (Oct. 8, 2019), <https://www.tampabay.com/florida-politics/buzz/2019/10/08/floridas-amendment-4-legislation-is-a-mess-felons-and-county-officials-testify/> [https://perma.cc/XJ65-VU2G].

31. See Scott Powers, *Fourth Amendment Challenge to Amendment 4 Bill Now Filed in Federal Court*, FLA. POL. (July 2, 2019), <https://floridapolitics.com/archives/300297->

After hearing the complaints for a stay on the new legislation before the cases went to trial in April 2020, Judge Robert Hinkle of the United States District Court for the Northern District of Florida stated that the process of restoring former felons' voting rights is "an administrative nightmare" because many court clerks do not have a standardized method to determine if felons have paid all of their fees, especially for old cases.<sup>32</sup> Additionally, Judge Hinkle raised other critical constitutional questions that must be answered by the Florida Legislature.<sup>33</sup> It is Judge Hinkle's belief that the legislature, not judges, should determine the process to remedy the situation.<sup>34</sup>

Florida is not a lone standout as a recent example of voter suppression.<sup>35</sup> During Georgia's 2018 gubernatorial elections, Secretary of State and candidate Brian Kemp was accused of preventing over 53,000 Georgians from voting by placing them on a "pending list," utilizing a controversial method of screening voters known as "exact match."<sup>36</sup> This system allows voters to be purged from the eligibility lists for minor inaccuracies such as data entry errors or dropped hyphens.<sup>37</sup> Criticism of Kemp became extreme when an audio recording of him complaining about increased voter turnout in the election was made public.<sup>38</sup> Voting advocacy groups

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challenge-to-amendment-4-bill-filed-in-federal-court [https://perma.cc/9MAV-TCBF].

32. Lawrence Mower, *Lawmakers Made Amendment 4 an 'Administrative Nightmare,' Federal Judge Says*, TAMPA BAY TIMES, <https://www.tampabay.com/florida-politics/buzz/2019/10/08/lawmakers-made-amendment-4-an-administrative-nightmare-federal-judge-says/> [https://perma.cc/G7Z7-9P39] (Oct. 9, 2019).

33. *Id.*

34. *Id.*

35. *See infra* notes 41–42 and accompanying text.

36. Astead W. Herndon, *Complaints of Voter Suppression Loom Over Georgia Governor's Race*, N.Y. TIMES (Oct. 11, 2018), <https://www.nytimes.com/2018/10/11/us/politics/georgia-voter-registration-kemp-abrams.html> [https://perma.cc/72E7-5CWD]. The "exact match" method involves the verification of voter applications and disqualifying any form that contains a minor mistake or inconsistency with the applicant's government identification. *Id.* The alleged misconduct was first reported by the Associated Press, which quoted the response of Kemp's then-Democratic opponent, Stacey Abrams, calling Kemp "a remarkable architect of voter suppression." Associated Press, *Voting Rights Become a Flashpoint in Georgia Governor's Race*, WABE (Oct. 9, 2018), <https://www.wabe.org/voting-rights-become-a-flashpoint-in-georgia-governors-race/> [https://perma.cc/8ZH3-JKLU].

37. Herndon, *supra* note 36.

38. *See* P.R. Lockhart, *Former President Jimmy Carter Calls for Georgia Secretary of State Brian Kemp to Resign*, VOX (Oct. 29, 2018, 12:50 PM), <https://www.fox.com>

complained and filed lawsuits as Kemp was accused of purging approximately 1.5 million registered voters from 2012 to 2016.<sup>39</sup> Former President Jimmy Carter, whose home state is Georgia, called on Kemp to resign as Secretary of State due to the potential conflict of interest, and to ensure a fair and nonbiased election process.<sup>40</sup>

Florida and Georgia are not alone regarding allegations of recent voter suppression.<sup>41</sup> In a survey conducted by the Center for American Progress regarding voter suppression during the 2018 midterm elections, numerous states, such as Alaska, North Carolina, Pennsylvania, Wisconsin, Texas, North Dakota, Ohio, and California, to name a few, had similar occurrences.<sup>42</sup>

## II. SETTING THE STAGE

The Merriam-Webster Dictionary defines democracy as “a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”<sup>43</sup> Additionally, Merriam-Webster defines universal suffrage as “the right of all adult citizens to vote in an election.”<sup>44</sup> For well over two centuries, the United States has been the international image of a pioneering republic and representative form of government based on democratic values.<sup>45</sup> America has been the standard against which democracies around the world have been measured.<sup>46</sup> The fact of the matter is that the United States is a grand experiment that had almost no chance of succeeding against the most powerful nation in the

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vox.com/policy-and-politics/2018/10/29/18038380/jimmy-carter-brian-kemp-georgia-voter-suppression-letter [https://perma.cc/Y8DX-LFCV].

39. Astead W. Herndon, *Georgia Voting Begins Amid Accusations of Voter Suppression*, N.Y. TIMES (Oct. 19, 2018), <https://www.nytimes.com/2018/10/19/us/politics/georgia-voter-suppression.html> [https://perma.cc/AXC3-TCJA].

40. *See id.*

41. Danielle Root & Adam Barclay, *Voter Suppression During the 2018 Midterm Elections*, CTR. FOR AM. PROGRESS (Nov. 20, 2018, 9:03 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/> [https://perma.cc/YUP4-86ZU].

42. *Id.*

43. *Democracy*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/democracy> [https://perma.cc/9348-5XGP] (last visited Dec. 31, 2020).

44. *Universal Suffrage*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/suffrage> [https://perma.cc/S7JR-43T8] (last visited Dec. 31, 2020).

45. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* XX (2000).

46. *See id.*

world at the time of its founding, Britain.<sup>47</sup> The path toward a true democracy has not been a linear journey with a consistent expansion of the right to vote.<sup>48</sup> The road to democracy has faced setbacks and deviations within the United States and will continue to do so.<sup>49</sup> In addition, nations that attempt to follow America's path toward democracy have and will continue to experience setbacks and deviations.<sup>50</sup>

Nevertheless, a government cannot accomplish a true democracy without universal suffrage.<sup>51</sup> Implied in the United States' worldwide identity as the standard-bearer of democracy is the belief that the United States espouses universal suffrage.<sup>52</sup> In fact, since 1989, The Carter Center, commenced by former President Jimmy Carter, has assisted with 113 democratic elections in thirty-nine countries.<sup>53</sup> Their work includes meeting with government officials and political candidates prior to elections, assisting with registration and campaign processes, observing voting procedures to reassure voters of safety and secrecy, monitoring the counting of votes, and facilitating the peaceful transfer of power.<sup>54</sup> The image around the world of the United States as the bastion of democracy and the reality of America's voting rights history do not fit together because the United States has failed to make universal suffrage an official goal of its democracy for much of its history.<sup>55</sup>

French political scientist and historian Alexis De Tocqueville traveled to the United States in 1831 to conduct an exhaustive study of representative self-government, authoring a four-volume series of books entitled *American Institutions and Their Influence*.<sup>56</sup> In *Democracy in America*, the first of the four volumes, he describes the

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47. See Helle C. Dale, *The American Experiment*, HERITAGE FOUND. (July 5, 2007), <https://www.heritage.org/political-process/commentary/the-american-experiment> [https://perma.cc/C695-T5ZG].

48. See *id.*

49. See *id.*

50. See *id.*

51. See KEYSSAR, *supra* note 45, at XVI.

52. *Id.*

53. *Waging Peace Through Elections*, CARTER CTR., <https://www.cartercenter.org/peace/democracy/observed.html> [https://perma.cc/5TQT-ZWLV] (Nov. 18, 2020); *Timeline of the Carter Center*, CARTER CTR., <https://www.cartercenter.org/about/history/index.html> [https://perma.cc/U5BS-PHUL] (last visited Dec. 31, 2020).

54. See *Waging Peace Through Elections*, *supra* note 53.

55. See KEYSSAR, *supra* note 45, at XVI.

56. See John G. Spencer, *Preface to the American Edition of ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA*, at i, vii (Henry Reeve trans., 1838).

system of democratic laws developed by “men of rank” who were the upper-class in the new nation.<sup>57</sup> Specifically, he wrote that the State of Maryland was the first to proclaim universal suffrage even though only “men of rank” were allowed to participate.<sup>58</sup> De Tocqueville describes the march toward universal suffrage in the United States as follows:

When a nation modifies the elective qualification, it may easily be foreseen that sooner or later that qualification will be entirely abolished. There is no more invariable rule in the history of society: the further electoral rights are extended, the more is felt the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength. The ambition of those who are below the appointed rate is irritated in exact proportion to the great number of those who are above it. The exception at last becomes the rule, concession follows concession, and no stop can be made short of universal suffrage.<sup>59</sup>

Suffrage in the United States has expanded significantly since De Tocqueville wrote *Democracy in America*.<sup>60</sup> Numerous factors have influenced the expansion and suppression of the right to vote in the United States.<sup>61</sup> Partisan politics have fueled many of the peaks and valleys along the way.<sup>62</sup> Political parties throughout American history have utilized voting laws, voting procedures, and new initiatives to their advantage, and all major political parties are guilty of doing so.<sup>63</sup> Throughout much of American history, the decision to expand voter access or suppress votes has been based on the partisan goals of the political party in power.<sup>64</sup> Other factors that caused deviations and setbacks on the road to universal suffrage include ethnic differences, class tensions, racial antagonisms, wars, shifting gender roles, and economic fluctuations.<sup>65</sup> The answer to this critical

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57. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 37–38. (Henry Reeve trans., 1838) (describing some examples of the democratic process in the U.S.).

58. See *id.* at 38.

59. *Id.*

60. See KEYSSAR, *supra* note 45, at XVIII–XIX.

61. See TOVA ANDREA WANG, *THE POLITICS OF VOTER SUPPRESSION: DEFENDING AND EXPANDING AMERICANS’ RIGHT TO VOTE* 33, 128, 130, 138, 145 (2012).

62. See *id.* at 33, 128–29.

63. See *id.* at 1, 33, 138.

64. See *id.* at 33, 128–29.

65. See KEYSSAR, *supra* note 45, at XXI.

question posed is the topic of this Article and requires historical examination of voting rights in the United States.<sup>66</sup>

### III. HISTORY OF VOTING RIGHTS IN THE UNITED STATES

#### A. *The Early Years of the New Nation*

During his March 15, 1965 speech to Congress entitled *The American Promise*, President Lyndon Johnson stated, “I speak tonight for the dignity of man and the destiny of democracy. . . . Our fathers believed that if this noble view of man was to flourish, it must be rooted in democracy. . . . Every American citizen must have an equal right to vote.”<sup>67</sup>

However, our founding fathers did not agree with President Johnson’s view on voter rights.<sup>68</sup> On September 5, 1774, the First Continental Congress met to organize a colonial response to the repressive actions of the British government.<sup>69</sup> The gathering included delegates from the thirteen colonies, with the exception of Georgia.<sup>70</sup> The Second Continental Congress met on May 10, 1775, after the start of the American Revolution.<sup>71</sup> On July 4, 1776, the Continental Congress issued the Declaration of Independence, written primarily by Thomas Jefferson.<sup>72</sup> The Continental Congress included statesmen such as Samuel Adams, John Adams, John Hancock, John Jay, Alexander Hamilton, Thomas Jefferson,

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66. *See infra* Part III.

67. Lyndon B. Johnson, U.S. President, Special Message to the Congress: The American Promise (Mar. 15, 1965), <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise> [<http://perma.cc/PAD2-U3GY>].

68. *See infra* notes 85–91 and accompanying text.

69. William F. Swindler, *The “United States in Congress Assembled” Came into Being 200 Years Ago with Ratification of the Articles of Confederation.*, 67 A.B.A. J. 166, 166 (2018).

70. Edward J. Cashin, *Revolutionary War in Georgia*, NEW GA. ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/history-archaeology/revolutionary-war-georgia> [<https://perma.cc/9T24-X983>] (Sept. 29, 2020). Georgia’s absence was due to its reliance on British protection from what they believed to be the looming threat of a Native American attack. *Id.*

71. Swindler, *supra* note 69, at 166.

72. Carlton F.W. Larson, *The Declaration of Independence: A 225th Anniversary Re-Interpretation*, 76 WASH. L. REV. 701, 702, 724 (2001).

Benjamin Franklin, James Madison, Patrick Henry, and George Washington.<sup>73</sup>

Following victory over Britain in the Revolutionary War, the Continental Congress met again to draft the Articles of Confederation, which were ratified on March 1, 1781, creating a “confederation of sovereign states” that proved to be ineffective.<sup>74</sup> The statesmen later met at a Constitutional Convention and drafted the first United States Constitution, which received the necessary nine out of the thirteen states’ ratification on June 21, 1788.<sup>75</sup> The issue of whether to have a strong central government led to the creation of political factions and political parties in the new nation.<sup>76</sup> The Federalists advocated for a strong central government and were led by Alexander Hamilton; the Anti-Federalists advocated for stronger state rights and were led by Thomas Jefferson.<sup>77</sup>

The United States Constitution went into effect in 1789 and became the supreme law of the land.<sup>78</sup> Two of the most hotly debated issues among the members of the Constitutional Convention were the legislative makeup and the counting of slaves for representation.<sup>79</sup> Regarding the legislature, the larger states wanted congressional seats to be determined by population, while the smaller states wanted them determined by statehood.<sup>80</sup> The drafters resolved the issue by establishing a bicameral legislature with the Senate seats determined by statehood and the House of Representatives

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73. Arthur R. Landever, *Those Indispensable Articles of Confederation—Stage in Constitutionalism, Passage for the Framers, and Clue to the Nature of the Constitution*, 31 ARIZ. L. REV. 79, 97–98 (1989).

74. *Id.* at 97; Gregory E. Maggs, *A Concise Guide to the Articles of Confederation as a Source for Determining the Original Meaning of the Constitution*, 85 GEO. WASH. L. REV. 397, 403 (2017).

75. Calvin H. Johnson, *Homage to CLIO: The Historical Continuity from the Articles of Confederation into the Constitution*, 20 CONST. COMMENT. 463, 464 (2003).

76. *Creating the United States: Formation of Political Parties*, LIBR. OF CONG., [https://www.loc.gov/exhibits/creating-the-united-states/formation-of-political-parties.html#skip\\_menu](https://www.loc.gov/exhibits/creating-the-united-states/formation-of-political-parties.html#skip_menu) [https://perma.cc/F4G2-9HA7] (last visited Dec. 31, 2020).

77. *Id.*

78. Gary Lawson & Guy Seidman, *When Did the Constitution Become Law?*, 77 NOTRE DAME L. REV. 1, 1–2 (2001) (“[T]he Constitution did not become effective as law until March 4, 1789, when the first session of Congress began.”).

79. Eric M. Freedman, *Why Constitutional Lawyers and Historians Should Take a Fresh Look at the Emergence of the Constitution from the Confederation Period: The Case of the Drafting of the Articles of Confederation*, 60 TENN. L. REV. 783, 818–21 (1993); Robert N. Clinton, *A Brief History of the Adoption of the United States Constitution*, 75 IOWA L. REV. 891, 905 (1990).

80. Craig Green, *United/States: A Revolutionary History of American Statehood*, 119 MICH. L. REV. 1, 46 (2020).

determined by population size.<sup>81</sup> Regarding the representation of slaves, the southern states wanted slaves to be counted in determining the number of seats in the House of Representatives while many northern states wanted to ban slavery entirely.<sup>82</sup> Ultimately, both sides arrived at the Three-Fifths Compromise and agreed that each slave would count as three-fifths of a person when determining the number of seats for each state in the House.<sup>83</sup>

“We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”<sup>84</sup> There is no doubt that President Johnson’s statements in his March 12, 1965 speech are a reflection of the introduction to the Declaration of Independence.<sup>85</sup> Thomas Jefferson used these words to defend the colonists’ natural rights in defiance of British tyranny.<sup>86</sup> The words of the Declaration of Independence did not become the basis for the United States Constitution in that all men were not created equal with regard to the right to elect their governing officials.<sup>87</sup> Under Article I, Section 2, the members of the House of Representatives were to be chosen by the people;<sup>88</sup> under Article I, Section 3, the members of the Senate were to be chosen by the legislature of each state;<sup>89</sup> and under Article II, Section 1, the President was to be chosen by electors appointed by each state in a manner of their choosing.<sup>90</sup> Otherwise, the United States Constitution was silent about the breadth of suffrage in the new nation.<sup>91</sup>

When the Constitution was signed in 1787, no federal voting standard was adopted, leaving the states with the right to decide who

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81. Clinton, *supra* note 79, at 900–01.

82. *Id.* at 905.

83. *Id.*

84. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

85. See Johnson, *The American Promise*, *supra* note 67.

86. See Dale, *supra* note 47.

87. See *supra* notes 81–83 and accompanying text.

88. U.S. CONST. art. I, § 2, cl. 1.

89. U.S. CONST. art. I, § 3, cl. 1.

90. U.S. CONST. art. II, § 1, cl. 1.

91. See *id.*; see also *Bush v. Gore*, 531 U.S. 98, 104 (2000) (“The individual citizen has no federal constitutional right to vote for electors for the President of the United States . . .”).

could vote.<sup>92</sup> The laws in the colonies were similar to those in Britain—where the right to vote and participate in governmental affairs was limited to adult men who owned property.<sup>93</sup> The justification for this practice was that men who owned property possessed a stake in the success or failure of the government and economy, and they had sufficient economic independence to warrant a credible voice in governmental affairs.<sup>94</sup> With few exceptions, women, enslaved African-Americans, Native Americans, Catholics, Jews, mulattoes, and non-property-owning adult white men were not able to vote when George Washington was elected President of the United States.<sup>95</sup> Thus in 1789, approximately six percent of the population had the right to vote in the land where the American Revolution was launched with the stated belief that all men were created equal.<sup>96</sup>

As previously stated, the march toward universal suffrage has been characterized by expansion and suppression since the Constitution of 1789 became the supreme law of the land.<sup>97</sup> On March 26, 1790, Congress passed the first Naturalization Act, which stated:

That any alien, be a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the terms of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of

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92. *Who Got the Right to Vote When? A History of Voting Rights in America.*, AL JAZEERA <https://interactive.aljazeera.com/aje/2016/us-elections-2016-who-can-vote/index.html> [<https://perma.cc/ERC7-923A>] (Aug. 18, 2020).

93. Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. CIN. L. REV. 1345, 1345 (2003); Donald Ratcliffe, *The Right to Vote and the Rise of Democracy, 1787–1828*, 33 J. EARLY REPUBLIC 219, 221 (2013); see David Avery, *Chartism*, BRITISH LIBR. (May 15, 2014), <https://www.bl.uk/learning/histcitizen/21cc/struggle/chartists1/historicalsources/source2/reformact.html> [<https://perma.cc/PD73-353H>].

94. See Ratcliffe, *supra* note 93, at 220.

95. KEYSSAR, *supra* note 45, at 5–7.

96. Grace Panetta et al., *The 19th Amendment Passed 100 Years Ago Today. The Evolution of American Voting Rights in 244 Years Shows How Far We've Come – and How Far We Still Have to Go*, BUS. INSIDER (Aug. 18, 2020, 3:50 PM), <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10> [<https://perma.cc/AM9T-FZPW>].

97. See *supra* text accompanying notes 60–65; see *Introduction to Federal Voting Rights Laws*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> [<https://perma.cc/57GE-PH2H>] (Aug. 16, 2018).

good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon, and thereupon such persons shall be considered a citizen of the United States.<sup>98</sup>

Thus, the year after the Constitution was ratified, Congress tied citizenship to race, and the right to vote was directly tied to citizenship.<sup>99</sup> Under the Naturalization Act of 1790, only aliens who were free white persons could become citizens.<sup>100</sup> As previously stated, enslaved African-Americans were not counted as citizens but as three-fifths of a person for the purpose of apportioning seats in the House of Representatives.<sup>101</sup>

The most significant expansion of the right to vote prior to the Civil War was the lowering of economic barriers.<sup>102</sup> Even though voting rights were left to the states, economic barriers began to fall as the Civil War loomed large for the United States.<sup>103</sup> In many areas, property requirements were abolished, but poll taxes, literacy requirements, and religious tests remained barriers to voting.<sup>104</sup> President Andrew Jackson promoted the rights of frontiersmen and advanced political rights for white men who did not own property.<sup>105</sup> Additionally, the growth of industry and industrial-wage labor gave rise to respect for common men, and the commitment to exclusive voting rights for property owners fell out of favor.<sup>106</sup> By the end of

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98. An Act to Establish an Uniform Rule of Naturalization (Naturalization Act of 1790), ch. 3, § 1, Stat. 103, 103–04 (1790) (repealed 1795).

99. Felice Batlan, “*She Was Surprised and Furious*”: *Expatriation, Suffrage, Immigration, and the Fragility of Women’s Citizenship, 1907-1940*, 15 STAN. J. CIV. RTS. & CIV. LIBERTIES 315, 348 (2020) (“The ability to vote was intricately tied to the complicated question of who the U.S. recognized as citizens, and this must be read against the complex background of coverture, the 1907 Act, the Cable Act, and naturalization and immigration laws.”).

100. See Naturalization Act of 1790, § 1, Stat. at 103–04.

101. U.S. CONST. art. I, § 2, cl. 3; see *supra* notes 81–83 and accompanying text.

102. Karlan, *supra* note 93, at 1346–48.

103. *Id.* at 1347–49.

104. See *Introduction to Federal Voting Rights Laws*, *supra* note 97.

105. *The Founders and the Vote*, LIBR. OF CONG., <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/elections/founders-and-the-vote.html> [https://perma.cc/B4H5-DC3B] (last visited Dec. 31, 2020).

106. See Ratcliffe, *supra* note 93, at 228 (discussing Massachusetts in the late 1700s, stating, “[a]ccording to one estimate, between 60 and 70 percent of adult males in

the 1780s, between sixty and ninety percent of adult white males in America could vote, indicating a major expansion of voting rights.<sup>107</sup> African-Americans, women, Native Americans, non-English speakers, and adult white males younger than twenty-one were not permitted to vote.<sup>108</sup>

### B. *The Civil War*

The Constitutional Congress had numerous problems to address, and one of the major problems was the apportioning of seats based on state population (including slaves) in the House of Representatives.<sup>109</sup> Per the aforementioned section, the northern states wanted to abolish slavery, while southern states wanted slaves to be counted when apportioning seats in the House of Representatives.<sup>110</sup> The states resolved their disagreement with the Three-Fifths Compromise; where slaves were to be counted as three-fifths of a person in determining the number of seats in the House of Representatives.<sup>111</sup> However, the leaders of the United States were not able to negotiate a compromise to keep the new nation united on the remaining multifaceted issues involving slavery.<sup>112</sup> Between 1861 and 1865, the Civil War tore the new nation apart as eleven states seceded and formed the Confederate States of America.<sup>113</sup>

Economics was a major issue that led to the Civil War.<sup>114</sup> During the seven decades between the ratification of the United States Constitution in 1788 and the beginning of the Civil War in 1861, the economies of the northern states and southern states grew in very different directions.<sup>115</sup> The Industrial Revolution that changed the

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Massachusetts seaboard towns could vote, and as many as 80 to 90 percent in most rural sections. . . . in any case within a few years the property qualifications were being ignored . . .”).

107. *Id.* at 230.

108. *The Founders and the Vote*, *supra* note 105.

109. Pamela S. Karlan, *Reapportionment, Nonapportionment, and Recovering Some Lost History of One Person, One Vote*, 59 WM. & MARY L. REV. 1921, 1925–28 (2018).

110. Norman W. Spaulding, *The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction*, 46 WM. & MARY L. REV. 2001, 2040–45 (2005); Karlan, *supra* note 109, at 1926–28.

111. Karlan, *supra* note 109, at 1926.

112. Jennifer L. Weber & Warren W. Hassler, *American Civil War*, BRITANNICA, <https://www.britannica.com/event/American-Civil-War> [https://perma.cc/8DD7-A7HV] (Oct. 6, 2020).

113. *Id.*

114. *See id.*; *see also infra* notes 115–23 and accompanying text.

115. *Constitution of the United States*, U.S. SENATE, [https://www.senate.gov/civics/constitution\\_item/constitution.htm](https://www.senate.gov/civics/constitution_item/constitution.htm) [https://perma.cc/LJ9U-YPEB] (last visited Dec. 31, 2020); *see Weber & Hassler, supra* note 112.

British economy also affected the former colonies.<sup>116</sup> While factories were established throughout the United States, the northern states had five times more factories than their southern counterparts.<sup>117</sup> The north had ninety percent more skilled laborers than the south, including an influx of immigrants who kept wages comparatively low in the north.<sup>118</sup> Therefore, northern states invested in factories, transportation systems, financial institutions, and print media to support their industrial economy.<sup>119</sup> The southern states' economy was based on agriculture with much of the labor provided by African-American slaves.<sup>120</sup> Because the price of cotton—their principal crop—skyrocketed during the 1850s, the southern states invested in slaves.<sup>121</sup> As a result, three-fifths of the wealthiest individuals in the United States lived in the South.<sup>122</sup> Therefore, the Confederate States left the United States to preserve their right to keep slaves and to maintain their economy.<sup>123</sup>

The admission of new states to the United States was an additional issue that led to the outbreak of the Civil War.<sup>124</sup> The first Republican President of the United States, Abraham Lincoln, won the 1860 election on a platform of promising to keep slavery out of newly acquired United States' territories that would eventually comprise new states.<sup>125</sup> These newly admitted states would eventually acquire seats and power in Congress.<sup>126</sup> His platform was not to end slavery in the already admitted states.<sup>127</sup> Nevertheless, his victory in the election caused seven of the eleven new states to

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116. See Weber & Hassler, *supra* note 112.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. See *id.*

124. See James McPherson, *A Defining Time in Our Nation's History*, AM. BATTLEFIELD TR., <https://www.battlefields.org/learn/articles/brief-overview-american-civil-war> [https://perma.cc/A22H-Q4NZ] (last visited Dec. 31, 2020); see also Weber & Hassler, *supra* note 112 (discussing tension over the expansion of slavery into new states).

125. McPherson, *supra* note 124.

126. See Luis R. Davila-Colon, *Equal Citizenship, Self-Determination, and the U.S. Statehood Process: A Constitutional and Historical Analysis*, 13 CASE W. RES. J. INT'L L. 315, 320–22 (1981); see also Eric W. Orts, *Senate Democracy: Our Lockean Paradox*, 69 AM. U. L. REV. 1981, 2050–55 (2019).

127. Abraham Lincoln, U.S. President, First Inaugural Address (Mar. 4, 1861) in SELECTIONS FROM THE WRITINGS OF ABRAHAM LINCOLN 255–66 (J.G. de Roulhac Hamilton ed., 1922).

secede.<sup>128</sup> At the onset of the Civil War, President Lincoln justified the North's position as an effort to preserve the Union and prevent the Confederate States of America from forming a new nation.<sup>129</sup> The focus of his efforts as Commander-in-Chief changed as Union soldiers embraced escaped slaves instead of returning them to their owners.<sup>130</sup> This change led to Lincoln issuing the 1862 Emancipation Proclamation, granting freedom to slaves in the states which had seceded from the Union.<sup>131</sup>

The Civil War was the deadliest and costliest war fought on American soil; of the 2.4 million soldiers who fought, 620,000 died, many more were injured, and the southern economy was left in ruin.<sup>132</sup> Additionally, the aftermath of integrating the former slaves into American society was greatly complicated by *Dred Scott v. Sandford*, in which the Supreme Court of the United States held that Black slaves were not considered citizens under the meaning of the United States Constitution.<sup>133</sup> Congress understood that a constitutional amendment was necessary to guarantee citizenship and basic civil rights for former slaves who were essentially declared nonpersons under *Dred Scott*.<sup>134</sup> With the re-election of Lincoln in 1864 and a Republican majority in Congress, the Thirteenth Amendment was passed and ratified in December 1865, eradicating slavery in the United States of America.<sup>135</sup> Section One of the Fourteenth Amendment (ratified in July 1868) gave birthright

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128. See McPherson, *supra* note 124; see also Weber & Hassler, *supra* note 112 (listing the states that seceded).

129. See Charles M. Hubbard, *Lincoln's Divided House: The Constitution and the Union*, 1 LINCOLN MEM'L U. L. REV. 51, 58 (2013) ("Ultimately, the secession of the southern slave states threatened the existence of constitutional democracy. . . . Lincoln believed that secession was unconstitutional. As President he had taken a solemn and sacred oath to uphold and defend the Constitution, and, with that commitment, he was prepared to defend the democratic principles of a government that vested political power in the electorate.").

130. See Wilson Huhn, *Slaves to Contradictions: 13 Myths That Sustained Slavery*, AKRON L. PUBL'NS, Jan. 2013, at 12–13 (detailing Lincoln's correspondence with Union Generals, demonstrating appreciation for the service of African-American soldiers).

131. See *id.*

132. *Civil War*, HIST., <https://www.history.com/topics/american-civil-war/american-civil-war-history> [<https://perma.cc/7JKF-NU7E>] (June 23, 2020).

133. See 60 U.S. 393, 404–05 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

134. See Alexander Tsesis, *Furthering American Freedom: Civil Rights & the Thirteenth Amendment*, 45 B.C. L. REV. 307, 316–18 (2004).

135. *The Senate Passes the Thirteenth Amendment*, U.S. SENATE, [https://www.senate.gov/artandhistory/history/minute/Senate\\_Passes\\_the\\_Thirteenth\\_Amendment.htm](https://www.senate.gov/artandhistory/history/minute/Senate_Passes_the_Thirteenth_Amendment.htm) [<https://perma.cc/7KWC-A4NJ>] (last visited Dec. 31, 2020).

citizenship to all and a federal guarantee of due process and equal protection rights.<sup>136</sup> In February 1870, the Fifteenth Amendment guaranteed male citizens the right to vote, stating that men would not be denied this right on the grounds of “race, color, or previous condition of servitude.”<sup>137</sup>

After becoming law, the Thirteenth, Fourteenth, and Fifteenth Amendments were successful in expanding the rights of African-American men to vote and hold public office, even in southern states.<sup>138</sup> However, in the early 1890s, “Jim Crow” laws were passed in the south to implement segregation and suppress the votes of African-Americans.<sup>139</sup> Explicit voter suppression continued for African-Americans throughout the deep south until 1965; especially in Louisiana, Mississippi, Alabama, Georgia, and South Carolina.<sup>140</sup> The primary methods of voter suppression used against African-Americans were violence, literacy tests, property tests, grandfather clauses, all-white primary elections, voter roll purges, non-incarceration requirements, and poll taxes.<sup>141</sup> In the Jim Crow South, these methods of voter suppression were also used against poor whites.<sup>142</sup> As a consequence, the period following the Civil War was characterized by tremendous expansion and tremendous suppression of the right to vote for African-American men.<sup>143</sup>

### C. *Women’s Suffrage*

According to Cambridge Dictionary, the term “man” is traditionally used to refer to all human beings, both male and

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136. U.S. CONST. amend. XIV, § 1.

137. U.S. CONST. amend. XV, § 1.

138. See *Race and Voting in the Segregated South*, CONST. RTS. FOUND., <https://www.crf-usa.org/black-history-month/race-and-voting-in-the-segregated-south> [https://perma.cc/ZA7X-3NEN] (last visited Dec. 31, 2020).

139. See *id.*

140. See Danyelle Solomon et al., *Systematic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019, 7:00 AM), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/> [https://perma.cc/BT4B-TVST].

141. See Russell Brooker, *Voting Rights for Blacks and Poor Whites in the Jim Crow South*, AM.’S BLACK HOLOCAUST MUSEUM, <https://www.abhmuseum.org/voting-rights-for-blacks-and-poor-whites-in-the-jim-crow-south/> [https://perma.cc/RCA9-3FYU] (last visited Dec. 31, 2020).

142. See *id.*

143. Bertrall L. Ross II & Douglas M. Spencer, *Passive Voter Suppression: Campaign Mobilization and the Effective Disenfranchisement of the Poor*, 114 NW. U. L. REV. 633, 652–55 (2019).

female.<sup>144</sup> However, the words of the Declaration of Independence, declaring that all men had the right to throw off British tyranny, did not include females.<sup>145</sup> The model in Colonial America followed that of Britain, where women did not gain the right to vote for well over a century after the Declaration of Independence was written.<sup>146</sup> In fact, women were traditionally excluded from voting in the ancient republics of Greece and Rome, and in the few European democracies that surfaced at the end of the eighteenth century.<sup>147</sup> As roughly half of the population, women were the largest disenfranchised group until 1920.<sup>148</sup> The women's suffrage movement began in the United States prior to the Civil War, as property requirements for adult white males to vote began to disappear.<sup>149</sup> Simultaneously, women were instrumental in other reform movements that addressed issues such as temperance, morality, and slavery.<sup>150</sup>

As women began to enter nineteenth-century reform movements and exercise their voices in non-traditional roles, a new movement emerged in the United States known as The Cult of True Womanhood or The Cult of Domesticity.<sup>151</sup> The philosophy of this movement was that women's happiness and power was based on four cardinal virtues: piety/religion, purity, submissiveness, and domesticity.<sup>152</sup> This movement gained ground in the United States through magazines, gift annuals, and religious literature.<sup>153</sup>

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144. *Man*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/man> [<https://perma.cc/QNK3-UC22>] (last visited Dec. 31, 2020).

145. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

146. Rebecca Myers, *General History of Women's Suffrage in Britain*, INDEPENDENT (May 24, 2013, 7:55 PM), <https://www.independent.co.uk/news/uk/home-news/general-history-women-s-suffrage-britain-8631733.html> [<https://perma.cc/7ZA4-9CHP>].

147. *Women's Suffrage*, BRITANNICA, <https://www.britannica.com/topic/woman-suffrage> [<https://perma.cc/6MMC-T7C9>] (Sept. 10, 2020); see Nikolaus Benke, *Women in the Courts: An Old Thorn in Men's Sides*, 3 MICH. J. GENDER & L. 195, 218–19 (1995) (comparing the Roman patriarchs to John Adams, stating that both “identifies the feminine gender with the private sphere”).

148. KEYSSAR, *supra* note 45, at 217–18.

149. Sandra D. O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657, 657–61 (1996); see *supra* notes 92–96 and accompanying text (discussing property requirement).

150. JoEllen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN'S L.J. 104, 143–45 (1994).

151. See *The Civil War and Challenging the “Cult of True Womanhood,”* WSKG (Feb. 11, 2016), <https://wskg.org/history/the-civil-war-and-challenging-the-cult-of-true-womanhood/> [<https://perma.cc/Y4C3-77J9>].

152. See *id.*

153. Susan M. Cruea, *Changing Ideals of Womanhood During the Nineteenth-Century Woman Movement*, 19 AM. TRANSCENDENTAL Q. 187, 193–98 (2005).

Furthermore, the movement urged women to avoid the pursuit of intellectual achievements, as they clashed with religious work; therefore, the business of politics and industry was reserved exclusively for men.<sup>154</sup>

Nevertheless, the women's suffrage movement in the United States was born out of the abolitionist movement.<sup>155</sup> In 1840, American abolitionist groups selected men and women to represent them at the World Anti-Slavery Convention in London, but female delegates were denied their seats on the convention floor and were assigned seats in the balcony.<sup>156</sup> Elizabeth Stanton and Lucretia Mott met in the balcony and realized their mutual concern regarding the predicament of women in the United States.<sup>157</sup> Eight years later, they announced a planned convention in the *Seneca County Courier* to "discuss the social, civil, and religious condition and rights of women."<sup>158</sup> At the Seneca Falls Convention held in Seneca Falls, New York, they issued the Declaration of Sentiments:

We hold these truths to be self-evident: that all men and women are equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness[.] . . .

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman[.] . . . To prove this, let facts be submitted to a candid world.

He has never permitted her to exercise her inalienable right to the elective franchise.<sup>159</sup>

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154. *See id.* at 188–89.

155. *See Antislavery Connection*, NAT'L PARK SERV., <https://www.nps.gov/wo/learn/historyculture/antislavery-connection.htm#:~:text=The%20women's%20rights%20movement%20was%20the%20offspring%20of%20abolition,in%20the%20anti%20slavery%20movement> [<https://perma.cc/Y88Q-WYVS>] (Feb. 26, 2015).

156. *Seneca Falls Convention*, NEW WORLD ENCYC. (Nov. 2, 2019), [https://www.newworldencyclopedia.org/entry/Seneca\\_Falls\\_Convention](https://www.newworldencyclopedia.org/entry/Seneca_Falls_Convention) [<https://perma.cc/B5DJ-CNXC>].

157. *Id.*

158. *Id.*

159. ELIZABETH CADY STANTON ET AL., DECLARATION OF SENTIMENTS (1848), [http://www.womensrightsfriends.org/pdfs/1848\\_declaration\\_of\\_sentiments.pdf](http://www.womensrightsfriends.org/pdfs/1848_declaration_of_sentiments.pdf) [<https://perma.cc/9NNW-U5T6>]. The Seneca Falls Convention and signing of the Declaration of Sentiments was a landmark moment for the women's rights movement in America. Carrie L. Cokely, *Declaration of Sentiments*, BRITANNICA, <https://www.britannica.com/event/Declaration-of-Sentiments> [<https://perma.cc/K4GW-MESZ>] (last visited Dec. 31, 2020). Sixty-eight women and thirty-two men signed the

In 1851, Elizabeth Stanton was introduced to Susan B. Anthony, an active member of the temperance movement.<sup>160</sup> In 1863, Elizabeth Stanton, Lucretia Mott, and Susan B. Anthony formed the Woman's National Loyal League and supported the Thirteenth Amendment to abolish slavery and promote full citizenship for women and Blacks.<sup>161</sup>

The Civil War ended, and the Thirteenth Amendment was ratified in 1865,<sup>162</sup> making slavery unconstitutional in the United States.<sup>163</sup> Because women's rights groups were instrumental in the abolitionist movement, women expected to gain greater rights along with freed slaves.<sup>164</sup> To that end, Susan B. Anthony and Elizabeth Stanton lobbied for universal suffrage while Amendments to the Constitution were posed following the Civil War.<sup>165</sup> However, the efforts of women suffragists were unsuccessful, and the Fourteenth and Fifteenth Amendments solidified the fact that women would not receive the right to vote.<sup>166</sup> Radical Republicans who drafted the Fourteenth Amendment were eager to grant "natural rights" to the freed slaves under Section 1, but not to women.<sup>167</sup> The word "male" was added to Section 2 of the Fourteenth Amendment, amending the Three-Fifths Clause of the Constitution regarding the process of counting citizens for apportioning seats in the House of Representatives.<sup>168</sup> Section 2 of the Fourteenth Amendment deviated from precedent in that for the first time, the term "male" was added to the United States Constitution.<sup>169</sup> Because Black men were increasingly excluded from voting, Congress felt the need to amend

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declaration, and the document itself demanded equality for all U.S. citizens—regardless of sex—and detailed how the government and its patriarchal society contributes to the oppression of women. *See id.*

160. *Women's Suffrage Movement—Facts and Information on Women's Rights*, HIST. NET, <https://www.historynet.com/womens-suffrage-movement> [https://perma.cc/7PAM-WFNU] (last visited Dec. 31, 2020).

161. *Id.*

162. *See supra* note 135 and accompanying text.

163. *See supra* note 135 and accompanying text.

164. O'Connor, *supra* note 149, at 658–62.

165. *See id.* at 659–63; *see also* Reva B. Siegel, *She The People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 948, 951 (2002) ("Women began seeking the right to vote under the federal Constitution during the drafting of the Fourteenth Amendment but did not secure recognition of this right until ratification of the Nineteenth Amendment over a half century later.").

166. O'Connor, *supra* note 149, at 661.

167. Lind, *supra* note 150, at 151–52.

168. O'Connor, *supra* note 149, at 660–61.

169. *Id.* at 661.

the Constitution defining the rights of citizens to vote.<sup>170</sup> The passage of the Fifteenth Amendment in 1870, guaranteeing the rights of citizens to vote, would not be denied based on “race, color, or previous condition of servitude.”<sup>171</sup> Early debates over the text of the Amendment involved discussions of extending the franchise to women, but the final draft did not contain gender inclusive language, but did have the term “previous conditions of servitude.”<sup>172</sup> As a result of being affirmatively excluded from the right to vote afforded to adult male African-Americans, many members of the women’s rights movement actively lobbied against passage of the Fourteenth and Fifteenth Amendments.<sup>173</sup>

For numerous reasons, the 144-year-long road from the Declaration of Independence, declaring all men were created equal, to the ratification of the Nineteenth Amendment, granting women the right to vote, had many setbacks.<sup>174</sup> First, the rift between the abolitionist movement and the women’s suffragist movement cannot be overstated.<sup>175</sup> Freed African-American abolitionists, including Harriet Tubman, were very active in the women’s rights movement.<sup>176</sup> Frederick Douglass gave a critical speech at the Seneca Falls Convention regarding women’s rights that inspired the delegates to pass the Declaration of Sentiments.<sup>177</sup> When he was the

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170. See *supra* notes 137–43 and accompanying text.

171. U.S. CONST. amend VX, § 1; Jeremy Amar-Dolan, Note, *The Voting Rights Act and the Fifteenth Amendment Standard of Review*, 16 U. PA. J. CONST. L. 1477, 1481–82 (2014).

172. Siegel, *supra* note 165, at 969–70 n.59 (articulating the Republican argument that the amendment should read: “The right of citizens of the United States to vote and hold office shall not be denied or abridged by the United States or any State for any reasons not equally applicable to *all* citizens of the United States.” (quoting CONG. GLOBE, 40th Cong., 3d Sess. 708 (1869))) (emphasis added); Travis Crum, *The Superfluous Fifteenth Amendment?*, 114 NW. U. L. REV. 1549, 1604–07 (2020).

173. Lind, *supra* note 150, at 165–66 (“The experience of being excluded from two political deals involving suffrage by the very men they had helped in the past deeply embittered Stanton and her supporters. As they had done with the Fourteenth Amendment, [they] actively [] campaign[ed] against the Fifteenth Amendment . . . .”); Adam Winkler, *A Revolution Too Soon: Woman Suffragists and the “Living Constitution,”* 76 N.Y.U. L. REV. 1456, 1522–23 (2001).

174. Greg Timmons, *The Women Behind the 19th Amendment*, BIOGRAPHY, <https://www.biography.com/news/19th-amendment-famous-suffragists> [https://perma.cc/2W9F-DTQV] (Feb. 25, 2020).

175. See *id.*

176. Sharon Harley, *African American Women and the Nineteenth Amendment*, NAT’L PARK SERV., <https://www.nps.gov/articles/african-american-women-and-the-nineteenth-amendment.htm> [https://perma.cc/3FMP-SRZS] (Apr. 10, 2019).

177. Timmons, *supra* note 174.

United States Marshall for the District of Columbia, Douglass' family members signed a petition for Congress to prohibit states from disenfranchising citizens on the basis of sex.<sup>178</sup> Former slave Sojourner Truth delivered her famous "Ain't I a Woman" speech at an 1851 national women's rights convention in Akron, Ohio.<sup>179</sup> However, at the close of the Civil War, Radical Republicans professed their lack of desire to simultaneously grant freed adult male slaves and women the right to vote.<sup>180</sup> Republican congressmen believed the time to expand the right to vote after the Civil War belonged exclusively to the freed slaves.<sup>181</sup> Even Black male abolitionist Frederick Douglass, concerned about freed slaves gaining the right to vote, abandoned his support for the women's suffrage movement.<sup>182</sup> As a result, American women did not receive the right to vote until the twentieth century.<sup>183</sup>

Additionally, The Cult of True Womanhood movement took a decided turn toward legislatively maintaining the suppressed status of women.<sup>184</sup> Federal and state laws were passed banning women from attending colleges and universities, voting, attaining professional employment, serving on juries, testifying in court, owning property, and entering into legal contracts.<sup>185</sup> The goal of The Cult of True Womanhood was to prepare women for marriage and motherhood.<sup>186</sup> Employment opportunities for single women were restricted to teaching and nursing,<sup>187</sup> and an unmarried woman carried the social stigma of being an old maid.<sup>188</sup> The "protected-class" status of women afforded to them by The Cult of True Womanhood worked to shield women from the right to vote.<sup>189</sup>

After the passage of the Fourteenth Amendment, women's suffrage groups organized formal organizations to address the issue of female disenfranchisement.<sup>190</sup> Elizabeth Stanton and Susan B. Anthony

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178. See *Woman Suffrage and the 19th Amendment*, NAT'L ARCHIVES, <https://www.archives.gov/education/lessons/woman-suffrage> [<https://perma.cc/2N68-6CGT>] (June 27, 2019).

179. Harley, *supra* note 176.

180. See Winkler, *supra* note 173, at 1519–20.

181. See KEYSSAR, *supra* note 45, at 94–98.

182. Phyllis Goldfarb, *Equality Writ Large*, 17 NEV. L.J. 565, 593 n.181 (2017).

183. See Timmons, *supra* note 174.

184. See *id.*

185. See *id.*

186. See *id.*

187. *Id.*

188. See *id.*

189. See *id.*

190. See Siegel, *supra* note 165, at 968–73.

formed the National Woman Suffrage Association.<sup>191</sup> Lucy Stone and others formed the American Woman Suffrage Association.<sup>192</sup> Prior to Woodrow Wilson's inauguration, suffragists and anti-suffragists clashed during a suffragist parade in Washington D.C, and many women were injured.<sup>193</sup> As American involvement in World War I became imminent, a newly formed group took a more militant approach to pressuring President Woodrow Wilson to reverse his opposition to the women's suffrage movement.<sup>194</sup> The National Woman's Party staged the first picket at the White House in United States history in 1917.<sup>195</sup> Many women were arrested, incarcerated, went on hunger strikes, and were force-fed.<sup>196</sup> They silently protested six days a week for almost three years and compared President Wilson to the German Kaiser.<sup>197</sup> In 1918, President Wilson reversed his position on women's suffrage based on America's involvement in World War I and women's support of the war effort.<sup>198</sup> He was unable to gain congressional support on his first attempt but was successful in doing so on his second attempt.<sup>199</sup> On August 18, 1920, the Nineteenth Amendment was ratified, and women gained the right to vote.<sup>200</sup> This would be the largest group to gain the right to vote in the history of the United States, and voter expansion had a seminal moment.<sup>201</sup> Another forty-five years passed before all African-Americans, Native Americans, and Asians fully

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191. *See id.* at 971–73.

192. *Id.* at 970 n.60 (“Stanton and Anthony assumed leadership of the National Woman Suffrage Association (NWSA), while Lucy Stone, Henry Blackwell, and others organized the American Woman Suffrage Association (AWSA).”) (citing ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN’S MOVEMENT IN AMERICA, 1848-1869*, 162–64 (1978)).

193. *See* Joan Marie Johnson, *Not as a Favor, Not as a Privilege, but as a Right: Women Suffragists, Race, Rights, and the Nineteenth Amendment*, 42 W. NEW ENG. L. REV. 385, 388 (2020).

194. *See Woman Suffrage and the 19th Amendment*, *supra* note 178.

195. *Id.*

196. *Id.*

197. *Id.*

198. *See id.*

199. O’Connor, *supra* note 149, at 667–68.

200. Neil S. Siegel, *Why the Nineteenth Amendment Matters Today: A Guide for the Centennial*, 27 Duke J. Gender L. & Pol’y 235, 241 (2020).

201. KEYSSAR, *supra* note 45, at 172–73; Richard L. Hasen & Leah M. Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress’s Power to Enforce It*, 108 GEO. L.J. 27, 29 (2020) (noting Justice Halarn’s observation of the magnitude of the Nineteenth Amendment as the largest sole act of voter enfranchisement in American history).

achieved the right to vote due to federal and state-sanctioned racially-based voter discrimination.<sup>202</sup>

*D. The Indian Citizenship Act of 1924*

Prior to the 1870s, the United States' policies regarding Native Americans focused primarily on treaties, reservations, removal, and even annihilation.<sup>203</sup> In 1887, the policy focus changed with the Dawes Severalty Act—also known as the Dawes Act and the General Allotment Act—which permitted the President to divide large Native American land holdings into small parcels allotted to individuals.<sup>204</sup> President Grover Cleveland divided the land into 160-acre allotments and sold the “surplus” land.<sup>205</sup> The funds from the sale of lands were used to establish schools for Native American children.<sup>206</sup> The Dawes Act was designed to encourage Native Americans to abandon their culture, assimilate into white American culture, and become farmers.<sup>207</sup> The Dawes Act had mixed results as allotments were stolen during the land rushes of the 1890s and much of the distributed land was non-agricultural, desert parcels.<sup>208</sup>

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202. *Morning Edition, Yes, Women Could Vote After The 19th Amendment — But Not All Women. or Men*, NPR (Aug. 26, 2020, 5:00 AM), <https://www.npr.org/2020/08/26/904730251/yes-women-could-vote-after-the-19th-amendment-but-not-all-women-or-men> [https://perma.cc/T6TJ-22UC] (stating that even after achieving the milestone enactment of the Nineteenth Amendment, “millions of people — women and men alike — were still excluded from the vote, as many barriers to suffrage remained”) (transcript available online).

203. See Willard Hughes Rollings, *Citizenship and Suffrage: The Native American Struggle for Civil Rights in the American West, 1830-1965*, 5 NEV. L.J. 126, 127, 129–33 (2004).

204. General Allotment (Dawes) Act of 1887, ch. 119, 24 Stat. 388, *repealed by* Indian Land Consolidation Act Amendments of 2000, Pub. L. 106-462, § 106(a)(1), 114 Stat. 2007; see Mary K. Nagle, *Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine*, 48 TULSA L. REV. 63, 65 (2013).

205. *Today in History - June 02*, LIBR. OF CONG., <https://www.loc.gov/item/today-in-history/june-02> [https://perma.cc/VYH6-GBYY] (last visited Dec. 31, 2020).

206. *Id.*

207. Nagle, *supra* note 204, at 73 (“Instead, the intent was that Indian Nations’ sovereignty would disappear, and individual Indians would abandon their tribal culture and traditions — essentially becoming fully functioning members of white society.”).

208. See Stephen Pevar, *The Dawes Act: How Congress Tried to Destroy Indian Reservations*, OUPBLOG (Feb. 8, 2020), <https://blog.oup.com/2012/02/dawes-act-congress-indian-reservations/> [https://perma.cc/R87Q-XY3S] (describing land allotted to Native Americans as “unsuitable for small-scale agriculture” and stating that most Native Americans had no desire to become farmers in the first place); see also Brief of *Amici Curiae* Historians, Legal Scholars, and Cherokee Nation in Support of Respondent at 3–8, *Carpenter v. Murphy*, 139 S. Ct. 626 (Sept. 25, 2018) (No. 17-1107) (outlining period between post-Civil War western expansion through the early

Another policy change occurred with the Indian Citizenship Act of 1924, which granted all Native Americans born in the United States citizenship by birth and made Native Americans the last specifically designated group in the United States to gain citizenship rights under the Fourteenth Amendment.<sup>209</sup> Native Americans were a unique ethnic group, as a significant number had previously attained citizenship by marrying white men, serving in the military, and receiving federal allotments through treaties and special statutes.<sup>210</sup> Unlike previous groups, their grant of citizenship was not the result of a movement or by petition to the United States Government.<sup>211</sup> Instead, it was based on the desire of the Federal Government to move Native Americans into mainstream American life.<sup>212</sup> Further, their participation in World War I accelerated the passage of the Indian Citizenship Act.<sup>213</sup>

The Society of American Indians facilitated the process of gaining citizenship among various Native American groups, while preserving the notion of layered citizenship where Native American land holdings remained sovereign territories.<sup>214</sup> In the years following the Indian Citizenship Act of 1924, many Native Americans assimilated into American culture and became economically successful while others continued to live in poverty.<sup>215</sup> Their assimilation, however,

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1900s, describing allotment processes forced upon Native Americans, and resulting large scale, unjust takings of land).

209. See Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253 (codified as amended at 8 U.S.C. § 1401(b)).
210. Jeanette Wolfley, *Jim Crow, Indian Style: The Disenfranchisement of Native Americans*, 16 AM. INDIAN L. REV. 167, 170–71, 176, 179–80 (1991).
211. See, e.g., *supra* notes 174–83 and accompanying text.
212. See Abi Fain & Mary Kathryn Nagle, *Close to Zero: The Reliance on Minimum Blood Quantum Requirements to Eliminate Tribal Citizenship in the Allotment Acts and the Post-Adoptive Couple Challenges to the Constitutionality of ICWA*, 43 MITCHELL HAMLIN L. REV. 801, 827 (2017).
213. See *Citizenship for Native Veterans*, NEBRASKA STUD., <http://www.nebraskastudies.org/en/1900-1924/native-american-citizenship/citizenship-for-native-veterans/> [https://perma.cc/7QMX-D42A] (last visited Dec. 31, 2020).
214. See Michelle Wick Patterson, “Real” Indian Songs: *The Society of American Indians and the Use of Native American Culture as a Means of Reform*, AM. INDIAN Q. 41, 45–47 (2002).
215. See Wolfley, *supra* note 210, at 202; see also Jennifer L. Robinson & Stephen L. Nelson, *The Small but Powerful Voice in American Elections: A Discussion of Voting Rights Litigation on Behalf of American Indians*, 70 BAYLOR L. REV. 92, 146–48 (2018) (listing beneficial factors that contribute to increased political participation of American Indians, such as business opportunities, ability to receive government funds, and education possibilities); see also Roebert Odawi Porter, *American Indians and the New Termination Era*, 16 CORNELL J.L. & PUB. POL’Y 473, 483–84 (2007)

did not include political assimilation.<sup>216</sup> Despite becoming citizens of the United States, Native Americans were denied the right to vote due to state control.<sup>217</sup> States selectively denied Native Americans the right to vote until 1957, at which time all states granted them the right.<sup>218</sup> In theory, changing state laws should have expanded the right to vote for Native Americans.<sup>219</sup> In practice, however, Native Americans faced many of the mechanisms utilized to prevent African-Americans from voting, including poll taxes, literacy tests, fraud, and intimidation.<sup>220</sup> Native American voting rights were greatly suppressed, and Native Americans had to wait for federal legislation to receive a federal guarantee of the right to vote.<sup>221</sup>

*E. The Civil Rights Act of 1964 and the Voting Rights Act of 1965*

“An act to enforce the constitutional right to vote” is the first statement in the long title of the Civil Rights Act of 1964.<sup>222</sup> From 1945 until 1957, civil rights bills designed to eradicate the states’ Jim Crow laws were introduced into Congress, but failed.<sup>223</sup> Despite the rights and protections afforded to former slaves under the Thirteenth, Fourteenth, and Fifteenth Amendments, the United States Supreme Court held that state-mandated segregation was constitutional in *Plessy v. Ferguson*.<sup>224</sup> The Civil Rights Act, passed in 1957, was

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(“As some Indian nations have quite prominently come into wealth, we all have taken on a new identity of ‘Rich Casino Indians’ in the American consciousness, including the poorest of us who remain in the majority of the Native population.”).

216. See Patty Ferguson-Bohnee, *How the Native American Vote Continues to Be Suppressed*, A.B.A. (Feb. 9, 2020), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-rights/how-the-native-american-vote-continues-to-be-suppressed/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/how-the-native-american-vote-continues-to-be-suppressed/) [https://perma.cc/AA5P-9L92].

217. See Jeanette Wolfley, *supra* note 210, at 181–82.

218. See *Indian Citizenship Act Is Enacted*, WORLD HIST. PROJECT, <https://worldhistoryproject.org/1924/6/2/indian-citizenship-act-is-enacted> [https://perma.cc/9WPM-TLSN] (last visited Dec. 31, 2020).

219. See *Voting Rights for Native Americans*, LIBR. OF CONG., <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/elections/voting-rights-native-americans.html> [https://perma.cc/KD6G-FMA4] (last visited Dec. 31, 2020).

220. *Id.*

221. *See id.*

222. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. § 2000e).

223. See Douglas S. Massey, *The Past & Future of American Civil Rights*, Spring 2011, at 37, 41–44.

224. 163 U.S. 537, 551–52 (1896).

weak but required the United States Commission on Civil Rights to make recommendations to the President regarding the state of civil rights in America.<sup>225</sup> After receiving the report, President John F. Kennedy knew more had to be done to address the situation regarding racial discrimination.<sup>226</sup> Later, via a nationally televised broadcast, President Kennedy informed Americans he was submitting the Civil Rights Act of 1963 to Congress.<sup>227</sup> The legislation was filibustered in the Senate and was not passed prior to the assassination of President Kennedy.<sup>228</sup> President Lyndon Johnson guided the bill's passage in 1964, making the Civil Rights Act of 1964 the most comprehensive piece of civil rights legislation in American history.<sup>229</sup>

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Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.

*Id.*

225. Civil Rights Act of 1957, Pub. L. 85-315, 71 Stat. 634; *see* Report, Executive Branch Cooperation with the Commission on Civil Rights (Feb. 27, 1959) (on file with the Dwight D. Eisenhower Presidential Library, Museum & Boyhood Home), <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/civil-rights-act/report-executive-branch.pdf> [<https://perma.cc/B38R-2YEC>] (outlining the Commission on Civil Rights' duties, role, authority, and purpose).
226. John F. Kennedy, U.S. President, Radio and Television Report to the American People on Civil Rights (June 11, 1963) *in* PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JOHN F. KENNEDY (1963) 468–71 (1964) (“Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them.”). Audio of the speech is available with the John F. Kennedy Presidential Library and Museum. *Report to the American People on Civil Rights*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/civil-rights-radio-and-television-report-19630611> [<https://perma.cc/S67N-S5GX>] (last visited Dec. 31, 2020).
227. Kennedy, Radio and Television Report to the American People on Civil Rights, *supra* note 226.
228. *See* Massey, *supra* note 223, at 42.
229. *See* Paulette Brown, *The Civil Rights Act of 1964*, 92 WASH. U. L. REV. 527, 527–29 (2014); *see also* *Legal Highlight: The Civil Rights Act of 1964*, U.S. DEP’T OF LABOR, <https://www.dol.gov/agencies/oasam/civil-rights-center/statutes/civil-rights-act-of-1964> [<https://perma.cc/REU6-637C>] (last visited Dec. 31, 2020) (“The Civil Rights Act of 1964 is the nation’s benchmark civil rights legislation, and it continues to resonate in America.”).

The Civil Rights Act of 1964, like previous amendments and legislation, did not end racial discrimination;<sup>230</sup> however, it represented progress during a difficult time in American history.<sup>231</sup> The Act outlawed discrimination based on race, color, religion, sex, and national origin.<sup>232</sup> Even though the Act addressed African-American voting rights, the voting provisions were weak, and suppression of the Black vote continued in southern states.<sup>233</sup> During the 1960s, many civil rights events were nationally televised, such as the March on Washington, where the organizers hoped to draw 100,000 participants.<sup>234</sup> Over 250,000 marchers attended, and Martin Luther King, Jr. closed with his famous “I Have a Dream” speech.<sup>235</sup>

No television broadcast did as much to change nationwide public opinion regarding the level of voter suppression in the deep south as the broadcast of Alabama state troopers beating six-hundred peaceful protestors on their march from Selma, Alabama to Montgomery, Alabama.<sup>236</sup> Their hope was to appeal directly to Governor George Wallace regarding their lack of voting rights in Dallas County, Alabama,<sup>237</sup> where African-Americans made up over half the population but were less than two percent of the registered voters.<sup>238</sup> The recording of March 7, 1965, known as Bloody Sunday, was flown to ABC Headquarters in New York City and interrupted that evening’s scheduled broadcast at 9:30 p.m.<sup>239</sup> Millions of Americans

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230. See *supra* notes 138–43 and accompanying text.

231. See Massey, *supra* note 223, at 43.

232. 42 U.S.C. § 2000; see Kenton, *supra* note 222.

233. Brown, *supra* note 229, at 540–42.

234. CHARLES EUCHNER, *WE STOOD ON A HEIGHT: MEMORIES OF THE 1963 MARCH ON WASHINGTON* 116 (2011). Charles Euchner, who took part in the March on Washington, provides a detailed account of the events that took place on August 28<sup>th</sup>, 1963, including his conversations with other demonstrators, his role in planning the event, and Dr. Martin Luther King, Jr.’s “I Have a Dream” speech. See generally *id.*; see also Gerald Rosenberg, *The 1964 Civil Rights Act: The Crucial Role of Social Movements in the Enactment and Implementation of Anti-Discrimination Law*, 49 ST. LOUIS U. L.J. 1147, 1150 (2004); see also Leland Ware, *Civil Rights and the 1960s: A Decade of Unparalleled Progress*, 72 MD. L. REV. 1087, 1091 (2013).

235. Ware, *supra* note 234, at 1091.

236. *Id.* at 1092; Robert Howell, *45 Years After March, Selma Priest Remembers Bloody Sunday*, CNN (Mar. 8, 2010, 12:42 PM), <https://www.cnn.com/2010/US/03/07/selma.march.anniversary/index.html> [<https://perma.cc/KMG8-GCD6>].

237. Ware, *supra* note 234, at 1090–91.

238. Jeff Wallenfeldt, *Selma March*, BRITANNICA, <https://www.britannica.com/event/Selma-March#ref324493> [<https://perma.cc/LM97-RSWU>] (Nov. 13, 2020).

239. *Id.* (after broadcasting the footage, demonstrations took place in over eighty cities in support of the civil rights movement).

watched the footage.<sup>240</sup> The national viewing of peaceful protesters under attack by state troopers was a turning point for President Johnson and Congress.<sup>241</sup> On August 6, 1965, President Lyndon Johnson signed the Voting Rights Act of 1965 into law.<sup>242</sup>

Ninety-five years after the Fifteenth Amendment was ratified, the Voting Rights Act of 1965 was passed—requiring states to enforce the Amendment.<sup>243</sup> Passing the Voting Rights Act was critical to reducing voter suppression because the Federal Government implemented voting reforms, traditionally reserved to the states, which prohibited states and their political subdivisions from implementing voting procedures that denied or suppressed the rights of citizens to vote due to color, race, or membership in a non-English speaking minority group.<sup>244</sup> Key provisions of the Voting Rights Act were designed to increase voter registration via federal examiners' oversight in areas where discrimination suppressed the vote as well as the prohibition of literacy tests.<sup>245</sup> The Voting Rights Act also required preclearance from either the United States Attorney General or the United States District Court for the District of Columbia for changes in voting practices or procedures.<sup>246</sup> Because states claimed the right to establish voting practices and procedures, several states brought legal challenges.<sup>247</sup> However, the United States Supreme Court upheld the constitutionality of the Voting Rights Act on numerous occasions.<sup>248</sup> In 1975, key provisions of the Voting Rights

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240. *The House and Selma: Bridging History and Memory*, HIST., ART & ARCHIVES: U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/> [https://perma.cc/59KF-ZXH7] (last visited Dec. 31, 2020).

241. See *History of Federal Voting Rights Laws*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/history-federal-voting-rights-laws> [https://perma.cc/4GTN-95G6] (July 28, 2017).

242. John Lewis & Archie E. Allen, *Black Voter Registration Efforts in the South*, 48 NOTRE DAME L. REV. 105, 113 (1972).

243. See Voting Rights Act of 1965, Pub. L. 89-110, 49 Stat. 437 (codified as amended in scattered sections of Title Fifty-Two of the United States Code).

244. KEVIN J. COLEMAN, CONG. RSCH. SERV., R43626, THE VOTING RIGHTS ACT OF 1965: BACKGROUND AND OVERVIEW 13–19 (2015).

245. *Id.* at 13–16, 18–19.

246. *Id.* at 13, 16–18.

247. *Congress and the Voting Rights Act of 1965*, NAT'L ARCHIVES, <https://www.archives.gov/legislative/features/voting-rights-1965> [https://perma.cc/J2DW-EGC3] (June 19, 2019).

248. *Id.*

Act were extended for another seven years.<sup>249</sup> In 1982, key provisions were extended for another twenty-five years.<sup>250</sup> In 2006, key provisions were again extended for another twenty-five years.<sup>251</sup> As a result of the Voting Rights Act of 1965 and the presence of federal officials in the south to enforce its provisions, it became increasingly difficult for state officials to engage in voter suppression,<sup>252</sup> and the number of African-Americans registering to vote surged in the south.<sup>253</sup>

#### F. Greater Expansion

In 1960, President John F. Kennedy was elected President of the United States, and African-Americans played a major role in his victory.<sup>254</sup> The election was bitter and one of the closest in American history.<sup>255</sup> Due to new computer technology, chaos played out on network television and caused voters to question the outcome of the narrow victory.<sup>256</sup> As a result of his narrow victory and a “small working margin in Congress,” Kennedy was hesitant to address the controversial topic of civil rights through legislative measures.<sup>257</sup> From 1960 until 1963, however, social pressures regarding civil rights exploded as nightly televised clashes between protesters and authorities became commonplace.<sup>258</sup> In 1963, critical events—i.e., the deaths of four young girls at the Sixteenth Street Baptist Church in Birmingham,<sup>259</sup> the murder of civil rights worker Medgar Evers,<sup>260</sup>

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249. *About Section 5 of the Voting Rights Act*, U.S. DEP’T JUST., <https://www.justice.gov/crt/about-section-5-voting-rights-act> [<https://perma.cc/DSW5-WAJA>] (Sept. 2, 2020).

250. *See id.*

251. *See id.*

252. WANG, *supra* note 61, at 33.

253. *Id.*

254. KEYSSAR, *supra* note 45, at 262.

255. Scott Bomboy, *The Drama Behind President Kennedy’s 1960 Election Win*, NAT’L CONST. CTR.: CONST. DAILY (Nov. 7, 2017), <https://constitutioncenter.org/blog/the-drama-behind-president-kennedys-1960-election-win/> [<https://perma.cc/89T4-ZZRV>].

256. *See id.*

257. *See Civil Rights Movement*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, <https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/civil-rights-movement> [<https://perma.cc/4WVNH-DTDE>] (last visited Dec. 31, 2020).

258. *See* Jon Greenbaum, *Looking Back on 1963 Fifty Years Later*, 40 HUM. RTS., no. 1, Dec. 2013, at 2, 3.

259. *See id.* at 4.

260. *See id.* at 3–4.

and the March on Washington—placed intense pressure on President Kennedy.<sup>261</sup>

Between the time President Kennedy was elected and when the highly publicized racial turmoil of 1963 erupted, issues surrounding poll taxes were debated in Congress and among the states.<sup>262</sup> The Twenty-Fourth Amendment was passed by Congress on August 27, 1962 and was ratified by the states on January 23, 1964.<sup>263</sup> Previously, state policies allowing poll taxes were upheld by the United States Supreme Court, which reasoned that the authority to establish voting procedures belonged to the states.<sup>264</sup> Poll taxes were not considered a violation of the Fifteenth Amendment as they were not explicitly based on race—because poll taxes also disenfranchised poor whites and unpaid poll taxes accumulated from one election to another.<sup>265</sup> Thus, the effects of poll taxes often permanently banned impoverished citizens from voting.<sup>266</sup> Ratification of the Twenty-Fourth Amendment caused little controversy as only five states still had poll taxes by 1964.<sup>267</sup> Nevertheless, ratification was a major step in the prevention of voter suppression as African-American voter registration in the south rose to over forty percent by 1964.<sup>268</sup>

“Old Enough to Fight, Old Enough to Vote” was the “rallying cry” leading to the Twenty-Sixth Amendment to the Constitution.<sup>269</sup>

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261. Rosenberg, *supra* note 234, at 1150 (“First President Kennedy and then President Johnson, as well as the bipartisan leadership in Congress, came to the conclusion that only a strong civil rights bill could possibly prevent widespread racial bloodshed and utter catastrophe for the nation.”) (quoting DANIEL M. BERMAN, *A BILL BECOMES A LAW: CONGRESS ENACTS CIVIL RIGHTS LEGISLATION* 139 (2d ed. 1966)).
262. See David Schultz & Sarah Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty-Fourth Amendment*, 29 QUINNIPAC L. REV. 375, 400, 402 (2011).
263. U.S. CONST. amend. XXIV; see also Brian P. Smentkowski, *Twenty-fourth Amendment*, BRITANNICA (Sept. 3, 2019), <https://www.britannica.com/topic/Twenty-fourth-Amendment> [<https://perma.cc/8MC9-S5F9>].
264. Smentkowski, *supra* note 263.
265. See *id.*
266. *Understanding the 24th Amendment*, LAWS, <https://constitution.laws.com/american-history/constitution/constitutional-amendments/24th-amendment> [<https://perma.cc/AR6P-QBC4>] (Dec. 22, 2019).
267. See Drew Desilver, *Anti-Poll Tax Amendment Is 50 Years Old Today*, PEW RSCH. CTR. (Jan. 23, 2014), <https://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today/> [<https://perma.cc/F8ED-RRU7>].
268. See Kraig Beyerlein & Kenneth T. Andrews, *Black Voting During the Civil Rights Movement: A Micro-Level Analysis*, 87 SOC. FORCES, no. 1, Sept. 2008, at 65, 4.
269. Joseph P. Williams, *‘Old Enough to Fight, Old Enough to Vote’: The 26th Amendment’s Mixed Legacy*, U.S. NEWS (July 1, 2016, 12:01 AM), <https://www.usnews.com/news/articles/2016-07-01/old-enough-to-fight-old-enough-to-vote-the-26th-amendments-mixed-legacy> [<https://perma.cc/ZK7W-KTH4>].

Lowering the age to vote became an issue during World War II because young men who were not old enough to vote were being conscripted into military service.<sup>270</sup> In 1942, Representative Jennings Randolph informed Congress that half of the Marines, one-quarter of the Army, and one-third of the Navy, were men under age twenty-one.<sup>271</sup> He and Senator Arthur Vandenberg sponsored the Vandenberg-Randolph Proposal to lower the voting age, which was referred to a committee for debate, where it died.<sup>272</sup> Because voting procedures were considered a state right, states had the authority to lower the voting age.<sup>273</sup> During World War II, Georgia was the only state to lower the minimum voting age to eighteen.<sup>274</sup>

Lowering the voting age was unsuccessfully debated in Congress numerous times during the 1950s and 1960s.<sup>275</sup> In the late 1960s, societal changes during the Vietnam conflict brought the issue to the forefront of American culture.<sup>276</sup> Draft resistance, radicalization of young people, and mass protests on college campuses catapulted lowering the voting age to an extremely urgent level.<sup>277</sup> Congress passed the Twenty-Sixth Amendment to the Constitution on March 23, 1971, granting eighteen-year-olds the right to vote, and it was ratified by the states on July 1, 1971.<sup>278</sup> In the decades following the ratification of the Twenty-Sixth Amendment, voter turnout among younger voters has steadily declined.<sup>279</sup> In the 1972 presidential election, about 55.4% of young voters turned out, and in 1980, only 39.9% voted.<sup>280</sup> With few exceptions, voters between eighteen and twenty-four years old vote at a much lower rate than other age

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270. Andrew A. Schwartz, *Old Enough to Fight, Old Enough to Swipe: A Critique of the Infancy Rule in the Federal Credit CARD Act*, 2011 UTAH L. REV. 407, 411 (“[W]hen many Americans (or their loved ones) enlisted or were drafted to fight in World War II and the Korean War in the 1940s and 1950s, support began to build for the idea that ‘if a man is old enough to fight he is old enough to vote.’”) (quoting then-presidential nominee Dwight D. Eisenhower in 1952)).

271. KEYSSAR, *supra* note 45, at 278.

272. *Id.*

273. *Id.* at 280–81.

274. *Id.* at 278.

275. *Id.* at 278–79.

276. *Id.* at 279–80.

277. *See id.* at 279.

278. U.S. CONST. amend. XXVI, § 1.

279. Mae C. Quinn et al., *Youth Suffrage: In Support of the Second Wave*, 53 AKRON L. REV. 445, 452 (2019) (stating that while “relatively low turnout rates for those under the age of 21 continued throughout the 1980s and 1990s, and persist today[,]” research indicates this may be due to “lack of knowledge about the process, difficulties in registering, and other impediments to accessing the franchise.”).

280. *Id.* at 451.

ranges.<sup>281</sup> Nevertheless, their right to vote is no longer suppressed by the inability to vote.<sup>282</sup>

Since the Twenty-Sixth Amendment was passed in 1971, the United States Constitution has not been amended to expand the right to vote.<sup>283</sup> Federal laws, however, have been passed to address expansion of voting rights.<sup>284</sup> The Voting Accessibility for the Elderly and Handicapped Act was passed by Congress in 1984, requiring states to take specific actions to make the voting process accessible for people with disabilities.<sup>285</sup> The Uniformed and Overseas Citizens Absentee Voting Act of 1986 requires states and territories to make voting accommodations for certain citizens residing abroad, including members of the military and merchant marines and their families.<sup>286</sup> The National Voter Registration Act of 1993 mandates that states make voter registration available for federal elections via mail, and when people apply for driver licenses, public assistance, disability services, and other government services.<sup>287</sup> The Help America Vote Act, passed in 2002, established minimum standards for states to follow in the administration of federal elections.<sup>288</sup>

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281. THOM FILE, U.S. CENSUS BUREAU, P20-573, YOUNG-ADULT VOTING: AN ANALYSIS OF PRESIDENTIAL ELECTIONS, 1964–2012 2 fig.1 (2014), <https://www.census.gov/prod/2014pubs/p20-573.pdf> [<https://perma.cc/HH5Y-VUKL>] [hereinafter FILE, YOUNG ADULT VOTING]; THOM FILE, U.S. CENSUS BUREAU, P20-577, WHO VOTES? CONGRESSIONAL ELECTIONS AND THE AMERICAN ELECTORATE: 1978–2014 9 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf> [<https://perma.cc/ST3G-8ZMR>] [hereinafter FILE, WHO VOTES?] (noting that voters “aged 18 through 34 consistently made up larger percentages of the electorate in presidential election years than in congressional election years.”).

282. *See supra* notes 269–78 and accompanying text.

283. *See* U.S. CONST. amend. XXVI.

284. *See Statutes Enforced by the Voting Section*, U.S. DEP’T. JUST., <https://www.justice.gov/crt/statutes-enforced-voting-section#vaeha> [<https://perma.cc/B9D2-PZB8>] (Sept. 11, 2020).

285. *See* Voting Accessibility for the Elderly and Handicapped Act, Pub. L. 98-435, 98 Stat. 1678 (1984) (codified as amended at 52 U.S.C. §§ 20101–20107).

286. *See* Uniformed and Overseas Citizens Absentee Voting Act of 1986, Pub. L. 99-410, 100 Stat. 924 (codified as amended at 52 U.S.C. §§ 20301–20310).

287. *See* National Voter Registration Act of 1993, Pub. L. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501–20511).

288. *See* Help America Vote Act, Pub. L. 107-252, 116 Stat. 1666 (2002) (codified as amended at 52 U.S.C. §§ 20901–21145).

## IV. STRATEGIES TO ADDRESS VOTER SUPPRESSION

Voter suppression in America is not a recent phenomenon—it is an American legacy.<sup>289</sup> Declaring our independence from British tyranny, Thomas Jefferson wrote, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>290</sup> Nevertheless, over 188 years later, on March 15, 1965, President Lyndon Johnson stated:

I speak tonight for the dignity of man and the destiny of democracy. . . . Our fathers believed that if this noble view of the rights of man was to flourish, it must be rooted in democracy. The most basic right of all was the right to choose your own leaders. . . . Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.<sup>291</sup>

The Voting Rights Act submitted to Congress after this speech was watershed legislation specifically designed to address voter suppression.<sup>292</sup>

Despite constitutional amendments and federal legislation, voter suppression is a national problem that reaches far and wide in the United States.<sup>293</sup> Many voter suppression tactics today are disguised as efforts to prevent voter fraud.<sup>294</sup> However, data indicates that voter fraud is not a major problem in the United States.<sup>295</sup> A recent research study published in the *Election Law Journal* entitled *Cost of Voting in the American States* provides detailed information regarding recent state legislative actions designed to make voting

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289. See CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY 4 (2018) (describing precipitous decline in Black voters' turnout in early 20th century due to persistent voter suppression efforts).

290. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

291. Johnson, *supra* note 67, at 281–82.

292. See *supra* notes 243–46 and accompanying text.

293. See, e.g., Root & Barclay, *supra* note 41.

294. Interview by Scott Simon with Michael McDonald, Pol. Sci. Prof., Univ. of Fla., on Weekend Edition Saturday, NPR (Nov. 3, 2018, 8:14 AM), <https://www.npr.org/2018/11/03/663858898/assessing-claims-of-voter-suppression-and-voter-fraud> [<https://perma.cc/Y5KB-9SUG>].

295. *Id.*

either more difficult or more convenient for Americans.<sup>296</sup> The modern issues with voter suppression are fueled by partisan politics led by politicians who have greater concern for their selfish ambitions than the survival of our democracy.<sup>297</sup> Indeed, moving our electorate further on the road to universal suffrage is not on their radar.<sup>298</sup>

If our American voting legacy is not troubling enough, know that even eligible voters in the United States vote at a low rate.<sup>299</sup> They do not vote as much as they have in the past, and young people vote at an alarmingly low rate.<sup>300</sup> According to a recent report from the U.S. Census Bureau, 41.9% of eligible American voters voted in the 2014 congressional elections.<sup>301</sup> In 1978, 33.6% of eighteen through thirty-four-year-old eligible voters voted in congressional elections; however, that number fell to 23.1% in 2014; for voters aged thirty-five through forty-four, the voting rates were 53.7% and 37.8% in 1978 and 2014, respectively; for voters aged forty-five through sixty-four, the rates were 59.4% and 49.6% in 1978 and 2014, respectively; and for voters aged sixty-five and above, the numbers were 61.9% percent and 59.4% in 1978 and 2014, respectively.<sup>302</sup> Increasing voter participation is a critical part of our struggle against voter suppression.<sup>303</sup>

Despite the setbacks, deviations, pitfalls, and disappointments along the road to true representative democracy, Americans will make progress with constant vigilance and determined efforts.<sup>304</sup> When a nation begins to erradicate voter suppression, it is likely to continue along that path until it achieves universal suffrage.<sup>305</sup>

First, we must reform our voter registration systems as we are a very mobile society.<sup>306</sup> In theory, the 1993 National Voter Registration Act (NVRA) is a beneficial tool for registering people to

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296. Quan Li et al., *Cost of Voting in the American States*, 17 ELECTION L.J. 234, 234 (2018).

297. Root & Barclay, *supra* note 41.

298. See, e.g., ANDERSON, *supra* note 289, at 41–42.

299. FILE, WHO VOTES?, *supra* note 281, at 3 tbl.1.

300. *Id.* at 3 tbl.1, 6 tbl.2.

301. *Id.* at 3 tbl.1.

302. *Id.* at 5 fig.4.

303. Li et al., *supra* note 296, at 235.

304. See Dale, *supra* note 47.

305. TOCQUEVILLE, *supra* note 57, at 38.

306. WENDY WEISER ET AL., BRENNAN CTR. FOR JUST., VOTER REGISTRATION MODERNIZATION 4 (2009), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Voter-Registration-Modernization.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter-Registration-Modernization.pdf) [<https://perma.cc/QC2X-65C8>].

vote, as it was designed to provide all Americans greater opportunities to register via the United States Postal Service when they apply for or renew a driver's license, or when they apply for public assistance.<sup>307</sup> In practice, the NVRA is very flawed.<sup>308</sup> The NVRA has very strict federal guidelines regarding purging voters from voting rolls; nonetheless, states routinely violate the guidelines under the guise of addressing voter fraud.<sup>309</sup> Problems of transferring the voter registrations from state departments of motor vehicles to local voter registration offices have been documented with up to twenty-five percent of registrants not appearing on voting rolls in various states.<sup>310</sup> To improve voter registration, Maine, Idaho, Minnesota, New Hampshire, Wisconsin, Montana, Iowa, Wyoming, North Carolina, and the District of Columbia have implemented Election Day Registration processes where voters register on the day they go to the polls.<sup>311</sup> North Dakota does not require voter registration.<sup>312</sup> In fact, most other democracies in the world have a universal system of registration administered at the national level, and this improves voter turnout.<sup>313</sup> The truth is that in the United States, volunteer groups are the most effective mechanism for registering voters.<sup>314</sup> American voter registration processes are not well-managed, and the complaints and lawsuits are widespread.<sup>315</sup> The NVRA is a critical part of addressing voter suppression, and if it is implemented properly, it will facilitate progress in remedying voter suppression.<sup>316</sup>

Maximizing early voting opportunities is another strategy to address voter suppression.<sup>317</sup> In 2012, thirty-five percent of nationwide ballots were cast early, and the number of Americans

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307. *About the National Voter Registration Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/about-national-voter-registration-act> [https://perma.cc/33Z2-VU8X] (May 21, 2019).

308. *See generally* ANDERSON, *supra* note 289, at 68–82 (lengthy discussion of how partisan actors in various states used NVRA to push limits on purging voter rolls).

309. *See generally id.*

310. WANG, *supra* note 61, at 128.

311. *Id.* at 130.

312. *Id.*; *Q: When Do Eligible Voters Register for an Election?*, N.D. SEC'Y OF STATE, <https://vote.nd.gov/PortalListDetails.aspx?ptlhPKID=79&ptlPKID=7> [https://perma.cc/LL7C-KL3Y] (last visited Dec. 31, 2020).

313. WANG, *supra* note 61, at 132 (describing alternative voter registration systems that could improve voter turnout).

314. *Id.* at 129.

315. *See id.* at 128.

316. *See id.* at 132.

317. *See id.* at 138.

utilizing early voting has continued to rise during the twenty-first century.<sup>318</sup> According to the Associated Press, thirty-seven states and the District of Columbia had some form of early voting in 2016.<sup>319</sup> Early voting, however, is falling victim to voter suppression tactics implemented by politicians with partisan motives.<sup>320</sup> Instances of reducing the number of days, weekends, and hours one has to cast their ballot to reduce the early voter turnout have been documented around the country.<sup>321</sup> To increase voter participation and combat voter suppression, early voting needs to be more convenient, not less convenient, for working people.<sup>322</sup> Voting opportunities during early mornings, late evenings, and weekends must be made available for working people with complicated lives.<sup>323</sup>

An additional early voting strategy designed to increase voting opportunities and address voter suppression involves no-excuse absentee balloting.<sup>324</sup> Traditional absentee ballots require voters to complete an application with varying state procedures and have a valid excuse to receive their ballot.<sup>325</sup> No-excuse absentee balloting does not require the voter to state a reason for receiving their ballot.<sup>326</sup> In 2019, the New York City Bar recommended no-excuse absentee voting as a way to ease access to the polls and increase voter participation.<sup>327</sup> Thirty-three states and the District of

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318. Daniel White, *These Are the States that Allow You to Vote Early*, TIME (Sept. 15, 2016, 4:12 PM), <https://time.com/4495435/early-voting-states/> [<https://perma.cc/TFF8-RX3B>].

319. *Id.*

320. *Cutting Early Voting Is Voter Suppression*, ACLU, <https://www.aclu.org/issues/voting-rights/cutting-early-voting-voter-suppression> [<https://perma.cc/FRM4-DPAL>] (last visited Dec. 31, 2020).

321. *Id.*

322. WANG, *supra* note 61, at 138.

323. *Id.*

324. *See* Root & Barclay, *supra* note 41.

325. *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 28, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> [<https://perma.cc/2MHB-S4W8>].

326. *Id.*

327. ELECTION LAW COMM. & GOV'T ETHICS & STATE AFFAIRS COMM., N.Y.C. BAR, SUPPORT FOR A NO-EXCUSE ABSENTEE VOTING CONSTITUTIONAL AMENDMENT (reissued Jan. 2019), <https://s3.amazonaws.com/documents.nycbar.org/files/2017377-NoExcuseAbsenteeVoting.pdf> [<https://perma.cc/5SSY-KWB9>] (proposing amendment to N.Y. CONST. art. 2, § 2); S. Con. Res. 1049, 2019–2020 Reg. Sess. (as reported to Sen. Comm. on the Judiciary, N.Y. Jan. 10, 2019), <https://legislation.nysenate.gov/pdf/bills/2019/S1049> [<https://perma.cc/KQ8F-7MA6>].

Columbia now offer no-excuse balloting, and a number of these states automatically mail ballots to all eligible voters.<sup>328</sup>

Next, addressing election day debacles is critical to minimizing real-time voter suppression.<sup>329</sup> Highly publicized long lines, broken and inefficient voting machines, police hovering around polling places, rejections due to purged voter rolls, and lack of the correct government identification discourages Americans from going to the polls on election day.<sup>330</sup> The primary reason given for state legislative requirements of purging voting rolls and requiring specific government issued identification is to reduce alleged voter fraud.<sup>331</sup> However, data presented in academic research, government studies, and by the United States Department of Justice repeatedly indicate that in-person fraud at polling locations is an “invented problem” in the United States and is the result of partisan politics.<sup>332</sup> At no other time were the abovementioned problems more evident than during the 2000 Presidential Election, a debacle that produced a strong wave of interest in improving and reforming American elections.<sup>333</sup> After that election, Americans watched in horror as the world’s standard-bearer of democracy became the laughingstock of the world.<sup>334</sup> On January 23, 2002, Congress passed the Help America Vote Act (HAVA).<sup>335</sup> Congress passed HAVA as a direct result of the 2000 election and established the Election Assistance Commission to implement new standards for election administration.<sup>336</sup> HAVA addresses issues such as provisional voting, accurate voting information, updated and upgraded voting equipment, statewide voter registration databases, voter identification procedures, and administrative complaint procedures.<sup>337</sup> HAVA signaled increased federal involvement in American elections, but election

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328. *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, *supra* note 325.

329. *See* ANDERSON, *supra* note 289, at 43–44.

330. *Id.* at 42.

331. *Id.* at 43–44.

332. *See* WANG, *supra* note 61, at 145.

333. *See id.* at 75–78.

334. *See* Warren Hoge, *The 2000 Elections: World Reaction; A Baffling Outcome in America, of All Places*, N.Y. TIMES (Nov. 9, 2020), <https://www.nytimes.com/2000/11/09/us/the-2000-elections-world-reaction-a-baffling-outcome-in-america-of-all-places.html> [<https://perma.cc/GZ2N-KWTG>] (covering bewilderment and initial reactions of other nations and world leaders in response to 2000 election controversy).

335. H.R. 3295, 107th Cong. (2d Sess. 2002).

336. *See* WANG, *supra* note 61, at 78.

337. *See* H.R. 3295, 107th Cong. §§ 271, 302–03, 402 (2d Sess. 2002).

administration primarily remains a state function in America; thus, voter suppression continues.<sup>338</sup> America, the wealthiest nation in the world, must remove the inconveniences and mistrust of going to the polls on election day to reduce real-time voter suppression.<sup>339</sup>

The last and arguably the most critical element regarding strategies to address voter suppression centers on the effects of partisan politics.<sup>340</sup> All major political parties in American history have utilized the vote to advance their political interests, and all have utilized ignoble strategies to suppress the vote.<sup>341</sup> As discussed above, the Federalists and Anti-Federalists had strong philosophical disagreements regarding the power dynamic between the Federal Government and the States.<sup>342</sup> At the end of his first term as President, George Washington was prepared to return to Mount Vernon and resume his vocation of farming.<sup>343</sup> The primary reason he consented to a second term was partisan fighting, which he believed to be detrimental to the new nation.<sup>344</sup> Indeed, the major topic of his *Farewell Address* on September 19, 1796, focused on partisan divisions related to domestic and foreign issues facing the United States of America.<sup>345</sup> Not surprisingly, he was extremely troubled by the potential for partisan politics, and advised the statesmen to put their differences aside to concentrate on what was best for the Union:

The unity of government which constitutes you one people is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, the support of your tranquility at home, your peace abroad, of your safety, of your prosperity, of the very liberty which you so highly prize. . . .

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338. See Eugene D. Mazo, *Finding Common Ground on Voter ID Laws*, 49 U. MEM. L. REV. 1233, 1238–40 (2019).

339. See *supra* text accompanying notes 289–338.

340. See WANG, *supra* note 61, at 126.

341. See *generally id.* (providing an overview of the history of voter suppression in America, focusing on the ways political parties utilized voter suppression).

342. See *supra* note 77 and accompanying text.

343. Dennis Jamison, *George Washington's Views on Political Parties in America*, WASH. TIMES (Dec. 31, 2014), <https://www.washingtontimes.com/news/2014/dec/31/george-washingtons-views-political-parties-america/> [<https://perma.cc/ER8G-RJ9E>].

344. See *id.*

345. See George Washington, U.S. President, Washington's Farewell Address, (Sept. 19, 1796), in SENATE PUBL'N NO. 108–21, 2004, at 1, 2, 9–10.

. . . Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. . . .

....

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute.<sup>346</sup>

## V. CONCLUSION

This Article purposely steered clear of partisan mudslinging—solely concentrating on historical facts—despite the deep partisan divides present in the United States of America; the same factionalism that was of grave concern to President George Washington.<sup>347</sup> This Article urges those who are concerned about voter suppression to do likewise, because all major political parties have used voter suppression to their benefit.<sup>348</sup> The stability of our great nation will soon be in the hands of eighteen through thirty-four-year-old citizens, the least-voting age group in our country.<sup>349</sup> The next generation faces a deeply divided nation, and they will need to make major repairs on the road to universal suffrage.<sup>350</sup> While the United States of America has made major progress toward universal suffrage since the ratification of the Constitution of 1789, there have been deviations and setbacks primarily caused by denying various segments of our populations the right to vote: voter suppression.<sup>351</sup> Thus, voter suppression is both a recent phenomenon and an American legacy, which calls for historical understanding of the problem and devoted activism of American citizens, especially those who have not been active participants in the process, to overcome this challenge moving forward.

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346. *Id.* at 6–7, 12.

347. *See id.* at 14–22.

348. *See supra* Part III.

349. *See* FILE, WHO VOTES?, *supra* note 281, at 5, 9.

350. *See generally supra* Part IV.

351. *See supra* note 65 and accompanying text.