

Profiles of *African Americans* in Tennessee



The Circuitous and Meandering Road to Voting Rights: The 60th Anniversary of the Voting Rights Act of 1965

The Voting Rights Act of 1965 had a long meandering road to passage before the United States Congress passed and President Lyndon Johnson signed it into law. Voting rights, expressly enfranchisement and disenfranchisement of diverse groups, have been a moral as well as a disputative political challenge throughout U.S. history. Because of their status in a white male dominated society, the right to vote was nonexistent for both African Americans and women. When the young amalgamation of colonies began their democratic experiment in the late 1700s, its governmental leaders granted the right to vote to a limited subset of society — white male landowners. Until the ratification of the United State Constitution, the young nation was governed under the Articles of Confederation that made the newly formed nation of states act more like independent sovereign countries. It promptly became apparent to some of the young nation's leaders that future stability required a stronger, more centralized government. The drafting of the proposed instrument of government for the young nation to be began on May 25, 1787, when the Constitutional Convention met for the first time with a quorum at the Pennsylvania State House (now Independence Hall) in Philadelphia, to revise the Articles of Confederation. It ended on September 17, 1787, when the proposed Frame of Government drafted by the convention's delegates adopted and signed the proposed constitution. The ratification process for the Constitution began that day, and ended when the final state, Rhode Island, ratified it on May 29, 1790. A year before the ratification of the U. S. Constitution in September 1789, the First U. S. Congress proposed to state legislatures twelve amendments to the Constitution. Articles 3 through 12, ratified December 15, 1791, by three-fourths of the state legislatures, constitutes the first ten amendments of the Constitution, known as the Bill of Rights. Article 2 concerning "varying the compensation for the services of the Senators and Representatives" was ratified in May 1992 as the 27th Amendment. The first amendment that concerned the number of constituents for each Representative was never ratified. African Americans and women were not allowed to participate in the governance of what became the United States of America.

The issue of Women's Rights emerged during the American Revolution, when in 1776 Abigail Adams issued a warning to her husband, John Adams (2nd U.S. president and founding father), "Remember, all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a rebellion and will not hold ourselves bound by any laws in which we have no voice or representation." Adams penned these

stipulations almost 150 years before the 19th Amendment granted women the right to vote. Her words urged him and the other members of the Continental Congress to consider the rights of women while laying the framework for the new, independent nation. In some colonies women voted, but all women lost the right to vote with each state constitution drafted between 1777 and 1807. Like women, African American men, for practical purposes were denied the right of the ballot. Tennessee's Constitution also exemplified evidence of prohibiting the right of the franchise to African Americans and women.

In 1796, Tennessee's constitution granted the franchise to all free men who met property and residency requirements, as well as the right to bear arms. Although this provision applied to a small number of free men of African descent, the state's 1835 Constitution no longer used the ownership of property as a requirement for white voters. In its place, legislators instituted a poll tax on voters. For Tennessee's African Americans, one of the most devastating aspects of its 1835 Constitution was it left enslavement as a part of its body politic, overturned their right to bear arms, and stripped away their right of the franchise. It took 35 years before African American men regained their right to vote.

During post-Civil War Reconstruction era, it took five years before a U.S. constitutional amendment granted African American males the right to vote. However, in May 1866, as the first state to return to the Union, Tennessee's General Assembly passed legislation giving African Americans the right to make contracts, inherit property, sue, hold equal benefits and other protections under the laws. Yet, legislation granting the right to vote remained elusive. However, two disparate events aligned and instigated critical changes.

Sampson Keeble, the Rev. Nelson G. Merry, Samuel and Peter Lowery, among others, organized the second State Colored Men's Convention, which met in Nashville in August 1866. They held daily marching protests at the Capitol in their quest to gain passage of a voting rights law aimed at giving African American men the right to vote. Governor William G. Brownlow, who took office in 1865, understood that he could only maintain political power if he held Confederate sympathizers at bay and that enfranchised African Americans could increase his voter base. Due to his efforts, the state legislative branch passed a bill in March 1867 giving African American men the right to vote and to hold political office. Tennessee's law predated the 15th Amendment to the U.S. Constitution by three years. Only in 1997 did Tennessee finally ratify the 15th Amendment.

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Notwithstanding, the need for an amendment granting African American men the right to vote was evident after the infamous 1857 *Dred Scott v. Sandford* Supreme Court decision that upheld enslavement and their status as non-citizens. On March 6 of that year, Chief Justice Roger Taney rendered the Court's majority opinion that stated enslaved people were not American citizens, could not expect any protection from the federal government or the courts, and that Congress had no authority to end enslavement from federal territory. The Reconstruction Amendments ended the Supreme Court's ruling that African Americans had no standing in the country: the 13th ended the institution of enslavement; the 14th made African Americans citizens, overturning the *Dred Scott* decision; and the 15th gave African American men the right to vote. It took another 50 years for women to gain suffrage, and Tennessee played a major role in this advancement.

As Reconstruction ended, the Supreme Court again used its long-reaching judicial arm to end the rights gained by African Americans, with its 1896 *Plessy v. Ferguson* decision. This decision upheld state-imposed Jim Crow laws that became the legal basis for racial segregation in the U.S. for the next fifty years. For African Americans, this ruling impacted every aspect of their lives. From the Reconstruction era until the 20th century push for civil rights, Jim Crow laws such as literacy tests, poll taxes, and other state and local discriminatory practices denied suffrage to African Americans. Yet, three Supreme Court cases increased the federal role in elections: *United States v. Reese* (1876); *Guinn v. United States* (1915); and *Smith v. Allwright* (1944).

With the onset of the Modern Civil Rights Movement that began with the *Brown v. Board of Education* (1954) decision, the efforts to desegregate American society across the nation moved beyond litigation and the courts to direct action protest and the U.S. Congress. With the 1955 Montgomery Bus Boycott, direct action protest manifested when African Americans were prompted by the actions of Rosa Parks, who refused to surrender her seat on a local bus. Five years later, students across the South protested racial segregation in public accommodations and the lack of voting rights for African Americans. These protests led to the passage of the 1965 Voting Rights Act (VRA). One year prior to the passage of the Act, Congress ratified the Constitution's 24th Amendment, which abolished and prohibited federal and state poll taxes during federal elections.

African Americans in the South faced tremendous obstacles and bureaucratic restrictions which denied them the right to vote. They also risked harassment, intimidation, economic reprisals, and physical violence when they tried to register or vote. As a result, African Americans faced limited or nonexistent voter registration along with political power.

In 1964, peaceful demonstrations organized by Civil Rights leaders and the malevolent violence that accosted them brought renewed attention to the obstruction of voting rights, especially in the South. Following the 1964

elections, the Southern Christian Leadership Conference (SCLC) and the Student Nonviolent Coordinating Committee (SNCC) agitated for the federal government to take action to protect the voting rights of racial minorities. Meanwhile, African Americans faced threats of violence and even death by those wanting to maintain the racial status quo. Their Alabama protests, especially in Selma, met the force of law enforcement who sadistically fought African American voter registration efforts. SNCC's James Forman said, "Our strategy, as usual, was to force the U.S. government to intervene in case there were arrests—and if they did not intervene, that inaction would once again prove the government was not on our side and thus intensify the development of a mass consciousness among blacks. Our slogan for this drive was "One Man, One Vote."

The murder of Mississippi voting-rights activists James Chaney, Andrew Goodman, and Michael Schwerner on June 21, 1964 by local members of the Klan and the attack by white state troopers on peaceful marchers in Selma gained national attention, persuading President Johnson and Congress to initiate consequential and effective national voting rights legislation. Due to the public's revulsion to the violence and Johnson's political skills, the long meandering and circuitous journey to African Americans gaining the right of the franchise ended when Congress passed the voting rights bill on August 5, 1965. After almost fifty years, Alabama's *Shelby County v. Holder* majority Supreme Court decision ruled that Section 4(b) was unconstitutional because the coverage formula was based on data over forty years old, making it no longer responsive to the current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.

Amendments passed by Congress in the 19th and 20th centuries granted African American men the right to vote (15th Amendment) and woman suffrage (19th Amendment, 1920); the 24th Amendment eliminated the poll tax (1964); and the 26th Amendment granted the right to vote to those eighteen years of age (1971).

The VRA came under assault when the U. S. Supreme Court made its ruling in *Shelby County v. Holder*, when on June 25, 2013, the Court issued its devastating decision that struck down the law's formula for determining which states and localities should be required to get federal approval for changes to voting policies to ensure that they were not racially discriminatory. Section 2 of the VRA has also come under attack. In 2021, *Brnovich v. Democratic National Committee* made it more difficult to mount successful Section 2 challenges against discriminatory voting rules. However, in June 2023, the Supreme Court in a 5-4 opinion upheld the lower court's finding that Alabama illegally diluted the electoral power of African American voters and forcefully rejected the state's attempt to strike down or scale back the law. The Court decidedly reaffirmed the legal framework that has guided Section 2 cases for forty years.

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