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Article 4

Commemorating the Forgotten Intersection of the Fifteenth and Nineteenth Amendments

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ARTICLES

COMMEMORATING THE FORGOTTEN INTERSECTION OF THE FIFTEENTH AND NINETEENTH AMENDMENTS

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> The women's rights movement, throughout its history, defined its priorities with reference to white middle- or upper-class women. Thus "discrimination that affected all women" included the right of owning property but not [B]lack women's voting rights.[1]

I. INTRODUCTION

This year we commemorate the one hundredth anniversary of the Nineteenth Amendment's ratification.[2] I use the term *commemorate* instead of *celebrate* because it is important to remember that this anniversary is also a time to reflect on the *lost* opportunities to advance equality for *all* one hundred years ago. This reflection seems especially appropriate in a presidential election year rife with accusations of voter suppression.[3]

First, a caveat about terminology. We commonly speak of the Nineteenth Amendment as conferring the *right* to vote on

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[1] Ronnie L. Podolefsky, *The Illusion of Suffrage: Female Voting Rights and The Women's Poll Tax Repeal Movement After the Nineteenth Amendment*, 7 COLUM. J. GENDER & L. 185, 221 (1997) (internal citations omitted).

[2] *See* U.S. CONST. amend. XIX.

[3] Jonathan Martin & Maggie Haberman, *Trump Hopes to Use Party Machinery to Retain Control of the G.O.P.*, N.Y. TIMES, Nov. 23, 2020, https://www.nytimes.com/2020/11/23/us/trump-hopes-to-use-party-machinery-to-retain-control-of-the-gop.html; *see also* TERRY SMITH, WHITELASH: UNMASKING WHITE GRIEVANCE AT THE BALLOT BOX 135 (2020).

women, but that is not what the actual text says. It reads: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."[4] Any right to vote is conferred by the state, not the federal constitution. The Nineteenth Amendment, like its cousin the Fifteenth Amendment—which applies to race—only prohibits states from disqualifying someone from becoming a voter due to sex.[5]

What we casually call the right to vote is actually a *franchise*—a privilege, that the state can choose to confer or withhold.[6] The Framers had a deep "distrust of direct democracy."[7] They consciously chose not to include voting as a constitutional right, instead giving the states the power to determine voter qualifications.[8] According to the United States Supreme Court, "[s]tates . . . have broad powers to determine the

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[4] U.S. CONST. amend. XIX.

[5] *See* U.S. CONST. amend. XV.

[6] *See* Minor v. Happersett, 88 U.S. 162, 164 (1875) (finding the right to vote not included in the privileges and immunities of federal citizens); *see also* Pope v. Williams, 193 U.S. 621, 632 (1904) (holding that nothing in the federal constitution confers "[t]he privilege to vote").

[7] ALLAN J. LICHTMAN, THE EMBATTLED VOTE IN AMERICA: FROM THE FOUNDING TO THE PRESENT 18 (2018). The Jurist William Blackstone opined that:

> The true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other.

Robert Crutchfield, *Abandon Felony Disenfranchisement Policies*, 6 CRIM. & PUB. POL'Y 707, 708 (2007).

[8] A few scholars argue that the Supreme Court, at least during the Warren era, treated voting as a fundamental right. *See* John M. Greabe, *A Federal Baseline for the Right to Vote*, 112 COLUMBIA L. REV. SIDEBAR 62, 68 & n.53 (2012) (citing ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 1080-81 (3d ed. 2009), which is Dean Erwin Chemerinksy's constitutional law text that cites several landmark cases decided by the Warren Court); *see also* Joshua A. Douglas, *Is the Right to Vote Really Fundamental?*, 18 CORNELL J. L. & PUB. POL'Y 143, 149–50 (2008). But see, for example, recent Supreme Court decisions upholding picture identification requirements to vote in elections like *Crawford v. Marion Co. Election Bd.*, 553 U.S. 181, 188–89 (2008). Also, the summary treatment by the Court of two absentee ballot requirements for photo identification during the 2020 election seem inconsistent with the view that voting is a fundamental right. *See, e.g.*, Texas Dem. Party v. Abbott, 140 S.Ct. 2015, 2015 (2020) (denying motion to expedite consideration of a law not allowing most voters under sixty-five to vote absentee in light of the pending election) & Merrill v. People First of Alabama, No. 20A67 (a five-to-four decision staying a lower court decision blocking restrictions requiring that voters provide a photo identification card with their absentee ballot, and have the ballot signed by two witnesses or a notary public.). Some scholars concede this point. Douglas, *supra*, at 144–46 (conceding that courts do not always treat restrictions on voting as fundamental rights issues).

conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns."[9] As one scholar notes, the decision not to constitutionalize the vote, consigning voter qualifications to the individual states, "reinforced the established view of the time that the vote, however essential to a popular government, was not a natural right but a privilege conferred by government and subject to constitutional and statutory limitations."[10]

In commemorating the one hundredth anniversary of the Nineteenth Amendment it is important to note that the quest for women's first-class citizenship, which I define as equal participation in all aspects of the American political process, has not been achieved. While white women have greater access to the franchise than non-whites, they are not necessarily considered political equals on the ballot. Legal scholar Reva Siegel points out that fifty years after ratification of the Nineteenth Amendment "women . . . were barely represented in Congress or the courts," and state laws containing gender-based restrictions were still valid.[11] Further, African Americans, women, *and* men, as well as other non-white individuals, continue to be denied unfettered access to the franchise.[12]

In addition, any discussion of the Nineteenth Amendment must be contextualized by mentioning the Fifteenth Amendment. That Amendment became one hundred and fifty years old in 2020.[13] Thus, in this Article the focus is on the expansion of the franchise to include women, especially African American women. In this Essay I explain how the histories of the Fifteenth and Nineteenth Amendments are inextricably intertwined, and why both amendments continue to face stiff resistance many years after ratification. Mississippi, for example, did not ratify the Nineteenth Amendment until 1984[14] and in 1997 Tennessee

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[9] Lassiter v. Northampton Co. Bd. of Elections, 360 U.S. 45, 50 (1959).

[10] LICHTMAN, *supra* note 7, at 16–17.

[11] Reva B. Siegel, *The Nineteenth Amendment and the Democratization of the Family*, 129 YALE L.J.F. 450, 473 (2020).

[12] *See* GILDA R. DANIELS, UNCOUNTED: THE CRISIS OF VOTER SUPPRESSION IN THE UNITED STATES (2020).

[13] *See* U.S. CONST. amend. XV.

[14] *19th Amendment By State,* NATIONAL PARK SERVICE, https://www.nps.gov/subjects/womenshistory/19th-amendment-by-state.htm [https://perma.cc/7N67-CF64] (last visited Mar. 4, 2021). The Nineteenth Amendment was ratified by thirty-six states. Maryland, a border state, initially rejected the amendment, not ratifying it until 1941. Eight other states ratified the Amendment more than two decades later (Virginia in 1952, Alabama in 1953,

became the last eligible state to ratify the Fifteenth Amendment.[15]

At the beginning of the nation access to the franchise was generally limited to property-owning or tax-paying *white* males, who constituted about six percent of the population.[16] By the 1830s, most states had eliminated their property-ownership requirements, but still largely limited suffrage to white men.[17] By 1856 universal, albeit, *white* men's suffrage was becoming a reality.[18] Thus, in one sense expanding voting access in 1870 to include Black men, and in 1920 to include women, was consistent with the general broadening of the franchise, and the shift from a republic form of government to a more participatory democracy model. Nevertheless, as I explain in this Essay, public sentiment and legal mechanisms impeded access to the franchise for each group. In some cases, even a constitutional amendment was insufficient protection. African American women and men, and many poor white women, for example, had to wait until the 1965 Voting Rights Act before formal biased impediments to voting

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Florida and South Carolina in 1969, South Carolina, Georgia in 1970, Louisiana in 1970, North Carolina in 1971 and lastly Mississippi in 1984). *Id.* Thus, southern and border states remained opposed to extending the franchise to women.

[15] Gregory Watson, *Tennessee and the U.S. Constitution's 15th Amendment*, TENN. STAR (Sept. 10, 2018), https://tennesseestar.com/2018/09/10/tennessee-and-the-u-s-constitutions-15th-amendment/ [https://perma.cc/Y4BQ-442N]. In addition to Tennessee, Kentucky, Maryland, and Delaware "(former slave states not covered by the Reconstruction Acts) rejected the amendment, as did Ohio, initially, and California and Oregon. New York rescinded its ratification." D. Grier Stephenson, Jr., *The Supreme Court, the Franchise, and the Fifteenth Amendment: The First Sixty Years*, 57 U.M.K.C. L. REV. 47, 52 (1988). Ratification by southern states was obtained because the Reconstruction Act required ratification "as a condition for readmitting the Confederate states and seating their delegate[es]." *Id.* at 50.

[16] *Expansion of Rights and Liberties – The Right of Suffrage*, Online Exhibit: The Charters of Freedom, NAT. ARCHIVES, July 6, 2016, https://web.archive.org/web/20160706144856/http://www.archives.gov/exhibits/charters/charters_of_freedom_13.html.

[17] *The Expansion of the Vote: A White Man's Democracy*, U.S. HISTORY: PRE-COLUMBIAN TO THE NEW MILLENNIUM, https://www.ushistory.org/us/23b.asp [https://perma.cc/2RZJ-6PEJ] (last visited Mar. 4, 2021).

[18] Kris W. Kobach, *Rethinking Article V: Term Limits and the Seventeenth and Nineteenth Amendments*, 103 YALE L.J. 1971, 1993 (1994). In the early nineteenth century only five states (Virginia, South Carolina, Georgia, Delaware, and Kentucky) mandated white-only suffrage by law. *See also* LICHTMAN, *supra* note 7, at 17.

were removed.[19] Further, voter suppression efforts continue today.[20]

II. THE 1830S: BECOMING *WOKE*

Most discussions of the women's suffrage movement start with the 1848 Seneca Falls women's rights conference. In this Part, I start a decade earlier and discuss how the legal status of white women and free African American women and men in the 1830s foreshadowed the woman suffragist movement.

A. The Legal Status of Free African Americans

According to Johns Hopkins historian Martha Jones, there is no consensus about the status of free Black people during the antebellum period, specifically regarding whether they were considered citizens before the *Dred Scott* decision.[21] Jones concludes that "the only consensus that emerges is one about the importance of fixing" their status.[22] While free Black activists born on American soil considered themselves citizens, "they did not agree about whether the state might affirm that fact."[23] Confirming their citizenship status was important because "[c]itizenship . . . would protect free black people from expulsion."[24] As citizens, they would not face possible deportation, or even statelessness.[25]

Chief Justice Taney's opinion in the 1857 *Dred Scott* case (*Scott v. Sandford*) confirmed free Black Americans' worst fears. While citizenship for white women was assumed, "with the hindsight of eight decades . . . [Taney] believed [that] citizenship for free blacks was unthinkable to the framers in 1787 because it was unthinkable to him in 1857."[26]

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[19] Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

[20] *See* Robin Levinson-King, *U.S. Election 2020: Why it Can Be Hard to Vote in the U.S.*, BBC NEWS, Oct. 20, 2020, https://www.bbc.com/news/election-us-2020-54240651 [https://perma.cc/AJ85-YBPR].

[21] Dred Scott v. Sandford, 60 U.S. 393, 403 (1856); *see also* MARTHA S. JONES, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA 11 (2018).

[22] JONES, *supra* note 21, at 11.

[23] *Id*.

[24] *Id*. at 4.

[25] *Id.*

[26] David Skillen Bogen, *The Maryland Context of Dred Scott: The Decline in the Legal Status of Maryland Free Blacks 1776–1810*, 34 AM. J. LEGAL HIST. 381, 411 (1990).

Prior to the *Dred Scott* decision there was not much discussion of the meaning of citizenship and the rights and privileges accorded citizens. "[N]ot all antebellum Americans saw the relationship between rights and citizenship in the same way."[27] For some, being a citizen was a "gateway to rights."[28] Citizenship, while a prerequisite in most states for voter eligibility, did not ensure voting rights. During that era "to be deprived of the vote did not mark one as a noncitizen; unpropertied men, women, and children were citizens even though in some jurisdictions ineligible to vote."[29]

On the other hand, "exercising rights was [important] evidence of citizenship."[30] Political activities like voting were evidence of citizenship.[31] In the 1830s, most free African Americans were "[u]nable to make the laws that regulated their communities . . . [and] governed their lives."[32] Free African Americans still experienced overt anti-Black racism. There were " 'legal disabilit[ies]': exclusion from militia service, naturalization, suffrage, public schooling, ownership of real property, office holding, and courtroom testimony."[33]

Black Americans linked the notion of legal rights to the idea of privileges and immunities of citizenship.[34] To be a citizen meant access to "[p]olitical rights—the vote, jury service, office holding . . . one key to winning lasting equality."[35] In questioning their citizenship status, free Black activists also saw a connection between their own legal disabilities and the anti-slavery movement. "They reasoned that free Black people would be barred from full equality as long as slavery persisted. . . . To oppose slavery, to fight for its downfall, was to protect one's freedom, and work for the liberty of family and friends."[36] As a

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[27] JONES, *supra* note 21, at 11.

[28] *Id*. Supreme Court Chief Justice Roger Taney in *Dred Scott v. Sanford* noted that white women although considered citizens and a part of the political community, shared no political power, and thus could not vote. 60 U.S. 393, 422 (1857).

[29] JONES, *supra* note 21, at 5.

[30] *Id.* at 11.

[31] *Id.*

[32] MARTHA S. JONES, VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL 18 (2020).

[33] JONES, *supra* note 21, at 3.

[34] *Id*.

[35] JONES, VANGUARD, *supra* note 32, at 20.

[36] *Id.* at 45.

result, some Black activists joined with radical abolitionists to press for the immediate end of African enslavement.[37]

According to Jones, early abolitionists believed that the enslavement of African Americans would not end quickly and therefore did not focus on existing anti-black bias.[38] In contrast, the radical abolitionists were "committed to changing the hearts and minds of Americans by 'moral suasion,' . . . until the national tide turned forever against slavery."[39] They pushed for the immediate end of slavery and "assumed the equality of Black and white Americans."[40] Most Blacks in the North sided with this branch of the abolition movement.[41]

Black women's suggestions were unwelcomed at these political meetings, leading some women to express their ideas about "equality and dignity that citizenship promised" in print.[42] Maria Miller Stewart of Boston, for example, "forged her public identity, starting in print and then moving to the podium. She was the first American woman to address an audience of both men and women on politics."[43] This event occurred "[l]ong before women's conventions became regulation occasions."[44]

Other Black women in the 1830s, like "Sarah Mapps Douglass and Philadelphia's Female Literary Association[,] used their pens as weapons when they gently rivaled the city's men."[45] There also was Mary Ann Shadd Cary, an early Black feminist, who started the *Provincial Freeman*.[46] Most of these women were educated, or seeking better education.[47] A few others came from more modest backgrounds like the formidable orator, Sojourner Truth, a formerly enslaved woman unable to read.[48]

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[37] *See id.* at 46.

[38] *See id.* at 44.

[39] *Id.* "The radical abolitionist movement was born in the early 1830s." *Id.* at 43.

[40] *Id.* at 44.

[41] *See id.* at 45.

[42] *Id.* at 20.

[43] *Id.* at 29. Ultimately Stewart was forced to "retire" from public speaking resorting instead to print. *Id.* at 33. Jones writes that Stewart "knew that her ideas were unwelcome and that her audacious challenge to the authority of men was out of bounds." *Id.*

[44] *Id.* Stewart "knew that her ideas were unwelcome and that her audacious challenge to the authority of men was out of bounds." *Id.* at 33. In 1833 she was forced to "retire" from public life. *Id.*

[45] *Id.* at 34.

[46] ROSALYN TERBORG-PENN, AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850–1920, 20 (1998).

[47] *Id.* at 16–19, 36. *See* JONES, VANGUARD, *supra* note 32, at 36.

[48] TERBORG-PENN, *supra* note 46, at 15–16.

Unsurprisingly, some white women were attracted to the abolition movement because they too lacked full equality. Their plight is outlined in the next Part of this Article.

B. The Legal Status of Free White Women

In many ways the status of white women, considered citizens in the 1830s and 1840s, was not much better than that of free African Americans. Martha Jones writes:

> [w]hite women saw their own oppression in the plight of enslaved African Americans. As persons who were legally disabled by laws of marriage, property holding, and inheritance, white women saw slavery as analogous to their own condition. Women, they argued, were owned by men, without rights or the capacity to act by way of individual will. Thus, they suffered under the slavery of sex.[49]

Some modern scholars consider white womens' analogizing their plight to the enslavement of African Americans as trivializing slavery.[50] *Feeling* like you are enslaved is quite different, on many levels, from *being* enslaved. It is important to remember, however, that the ideals of freedom and equality were linked with "specific calls for citizenship and enfranchisement. . . . A belief in 'freedom' and 'emancipation' constituted the ideal toward which the critics of many forms of oppression were striving."[51]

Many middle-class and affluent white women, awakened by their improved educational opportunities, were attracted to the political movements of the late 1830s and early 1840s.[52] They longed to participate in the political life of America, but the social

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[49] *Id.* at 46. *See generally* ANA STEVENSON, THE WOMAN AS SLAVE IN NINETEENTH-CENTURY AMERICAN SOCIAL MOVEMENTS (2019). Stevenson writes: "From its very beginnings, discourses of slavery and tyranny were at the center of how the women's rights movement conceived of its imperatives." *Id.* at 214 (citing David Brion Davis, *Declaring Equality: Sisterhood and Slavery*, *in* WOMEN'S RIGHTS AND TRANSATLANTIC ANTISLAVERY IN THE ERA OF EMANCIPATION 5 (Kathryn Kish Sklar & James Brewer Stewart eds. 2007)).

[50] Stevenson concedes: "It is challenging to reconsider the woman-slave analogy as an analytical or theoretical approach because the logic that informed it was deeply racist and irrevocably flawed." *Id.* at 34.

[51] *Id.* at 214 (citing Ellen Carol DuBois, *Ernestine Rose's Jewish Origins and the Varieties of Euro-American Emancipation in 1848*, *in* WOMEN'S RIGHTS AND TRANSATLANTIC ANTISLAVERY IN THE ERA OF EMANCIPATION 280 (Kathryn Sklar and James Brewer Stewart eds. 2007)).

[52] *See* JoEllen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN'S L. J. 103, 131 (1994).

mores of the time frowned on women speaking in public.[53] A few women became active in the abolitionist movement, and "[t]he abolitionist crusade taught . . . [them] to speak in public, to organize a petition drive, and perhaps most important, to apply the language of natural rights to the question of human rights."[54] Rosalyn Terborg-Penn writes: "The early woman suffragists who grew out of this abolitionist movement were radical in their attempts to oppose gender conventions by moving outside of the so-called women's sphere and acting independently in calling for their rights."[55]

Similarly, many early African American women abolitionists, like Sarah Remond, Sarah Mapp Douglass, and the Forten sisters—Sarah, Margaretta, and Harriett—were educated, free-born, northern activists.[56] They too were attracted to the notion of equality and suffrage for all due to their experience with sexual and racial inequality.[57] They used the skills they learned about political organizing and speaking "to oppose racism, and then took even more risky tactics to oppose sexism . . . [fighting] both types of oppression, simultaneously."[58]

As a natural byproduct of their activism, women, white and Black, pushed for leadership positions within antislavery societies.[59] They faced resistance. In 1840, when women secured leadership in the American Anti-Slavery Society, many men who had been active in the organization left.[60] Black women supported the move to gain leadership positions, but while four white women were elevated to the society's highest ranks, the sole Black woman candidate was not.[61] Racial bias might explain the loss.

Martha Jones writes:

> It took courage to be an antislavery woman. Some risked their reputations, challenging those who thought the politics of abolitionism was men's business. Others risked the charge of

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[53] Black women, for example, participated in Black political movement but were "expected . . . to assist with building the community while also remaining subordinate." JONES, VANGUARD, *supra* note 32, at 19.

[54] ELNA C. GREEN, SOUTHERN STRATEGIES: SOUTHERN WOMEN AND THE WOMAN SUFFRAGE QUESTION 6 (1997).

[55] TERBORG-PENN, *supra* note 46, at 20.

[56] *Id.* at 16–19; JONES, VANGUARD, *supra* note 32, at 36.

[57] *See* TERBORG-PENN, *supra* note 46, at 19–20.

[58] *Id.* at 20.

[59] JONES, VANGUARD, *supra* note 32, at 53.

[60] *Id.* at 57.

[61] *Id.* at 58.

> overstepping by fueling the national strife over slavery's future. Those who left the confines of their homes, churches, or women's circles encountered ridicule.[62]

The consequences for Black women might be especially severe.

"Black women abolitionists endured a litany of risks, and racist violence [that] marred their public lives, even as teachers or churchgoing women."[63] One particularly chilling example occurred in May 1838 at an interracial meeting in Philadelphia to establish a national women's antislavery organization.[64] On the second day of the meeting, at an evening session where the well-known abolitionists William Lloyd Garrison and Angelina Grimké Weld were scheduled to speak to a crowd of three thousand, the attendees were met by a white mob outside the Pennsylvania Hall, which assaulted several African Americans as they left the meeting.[65] "[T]he mob was especially provoked by the presence of Black women."[66] When those in charge of the meeting *refused* to exclude Black women, the mob set the hall on fire.[67]

Many of the women active in the antislavery movement were also interested in advancing the rights of women. Thus, there was some overlap in membership and goals. The next Part of this Essay briefly explains the alliance between the radical abolitionists and the burgeoning woman suffragist movement.

III. 1848–1869: THE WOMAN SUFFRAGE MOVEMENT

From the beginning, advocates of women's suffrage also faced hostility. The famous 1848 Seneca Falls women's rights conference that marked the formal beginning of the woman suffragist movement was lambasted as "The Hen Convention."[68] The participants were described by "[o]ne newspaper writer . . . as 'divorced wives, childless women, and some old maids.' "[69] James Mott, the husband of abolitionist Lucretia

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[62] *Id.* at 47.
[63] *Id.*
[64] *Id.* at 49–53.
[65] *Id.* at 51.
[66] *Id.*
[67] *Id.* at 52.
[68] ELEANOR CLIFT, FOUNDING SISTERS AND THE NINETEENTH AMENDMENT 13 (2003).
[69] *Id.*

Mott, chaired the convention because the sight of a woman chair would have been considered "too scandalous."[70]

While African American abolitionist Frederick Douglass' was at the convention, there is no official record of attendance by other Black women or men.[71] Notwithstanding the sexism within the abolition movement, Douglass openly supported women's suffrage.[72] In fact, that same year, Douglass, then president of the National Convention of Colored Citizens, added "the issue of women's rights . . . [at its meeting in Cleveland, Ohio] to the convention's agenda, though it was not an easy fit."[73] At the convention suffragist Elizabeth Cady Stanton joined with Douglass in "making the case that the right to participate in government is a fundamental principle of equality, from which all other rights would flow." Douglass and Stanton prevailed, but by a small majority.[74]

African American women because of their gender *and* race appreciated the close connection between both causes. They joined white suffragists like Susan B. Anthony and Lucretia Mott in the push for *universal* suffrage—all women and men.[75] Unfortunately, the role of Black suffragists in the quest for the Nineteenth Amendment was largely erased from the movement's history as recorded by white suffragists like Stanton, Anthony, and other white suffragists.[76] So too was the role that race played in the quest for women's suffrage.

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[70] LISA TETRAULT, THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN'S SUFFRAGE MOVEMENT, 1848–1898, at 13 (2014).

[71] TERBORG-PENN, *supra* note 46, at 14 (speculating that African American men and women may have attended the convention, despite their absence from the official records kept by white suffragists). Tellingly Martha Jones writes: "Black women did not attend the Seneca Falls convention. They were not barred or excluded. . . . On those meeting days . . . the Black women of Seneca Falls were elsewhere." JONES, VANGUARD, *supra* note 32, at 63.

[72] TERBORG-PENN, *supra* note 46, at 14.

[73] JONES, VANGUARD, *supra* note 32, at 65.

[74] CLIFT, *supra* note 68, at 14.

[75] Neale McGoldrick, *Women's Suffrage and the Question of Color*, 59 SOC. ED. 270, 270 (1995).

[76] In the 1880 Elizabeth Cady Stanton and Susan B. Anthony, along with Matilda Joslyn Gage, began writing what would become the first of volume of the *History of Woman Suffrage*. TETRAULT, *supra* note 70, at 112. Stanton, "who was never an ardent abolitionist" recast the influence of the abolitionist movement on the woman's suffrage movement depicting the former as "outrageous[ly]" hostile to women's rights and the woman's suffrage movement arose "as a necessary break with abolition." *Id.* at 122. In contrast, Lucy Stone argued that the woman's suffrage movement in the United States and England has its origins in the 1840 World's Anti-Slavery Convention. *Id*. Martha Jones writes that the six-volume history

In many respects, the mid-nineteenth-century coalition between suffragists and abolitionists was a pragmatic alliance reflecting their similar goals. The linkage between woman suffrage and abolition seemed more compatible to some white women suffragists like Anthony, than for others like Stanton.[77] Members of both movements wanted equality, and each thought that political rights—a seat at the table—were key to winning lasting equality.

A few scholars, however, see the alliance between radical abolitionists and woman suffragists differently. Law professors Catherine Powell and Camille Gear-Rich argued that this alliance was "more than merely one of political convenience," rather, it was an alliance that "embodie[d] a shared conceptual vision as well. . . . [This vision] fused the principles of the American Revolution concerning representation with 'the radical egalitarianism' of the abolition movement."[78] There is probably some truth in both views.

The Civil War interrupted, and ended, the first-generation woman suffrage movement.[79] After the war, the controversy over the citizenship status of African Americans, free or enslaved, created by the *Dred Scott* decision,[80] and its reversal by the Thirteenth Amendment,[81] provided an opportunity to reconsider the nation's social contract. African Americans and white women viewed the debates on the Reconstruction Amendments as one such opportunity. Unfortunately, the alliance between the woman suffragist and abolitionist movements proved too fragile. The next Part of this Essay discusses why the coalition fell apart.

IV. THE POST–CIVIL WAR FIGHT FOR SUFFRAGE

With the ratification of the Thirteenth Amendment formally emancipating all formerly enslaved people of African ancestry, the question of their citizenship status remained to be

"relegated Black women to the margins." JONES, VANGUARD, *supra* note 32, at 10. Later historians relying on this text repeated the omission. *Id.*

[77] TERBORG-PENN, *supra* note 46, at 22–23. Terborg-Penn writes that Stanton, although an abolitionist, was more concerned with woman's suffrage. *Id* at 23.

[78] Catherine Powell & Camille Gear-Rich, *The "Welfare Queen" Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Conditions*, 108 GEO. L.J. 105, 141 (2020).

[79] TERBORG-PENN, *supra* note 46, at 23.

[80] *See generally* Dred Scott v. Sandford, 60 U.S. 393 (1857).

[81] *See* U.S. CONST. amend. XXIII.

determined.[82] In a sense these newly recognized Black citizens were in the same position as white women: citizens without political rights.[83] Thus, a quest for full citizenship rights, including the right of suffrage, seemed a unifying goal for both groups.[84] The rupture between the suffragists and former abolitionists was caused, in part, by debates over the Fourteenth and Fifteenth Amendments.

After emancipation, African American and white women saw the suffrage issue differently. For African American women suffrage was a "collective, not an individual possession."[85] Black women and men pushed for suffrage. The quest for suffrage was a communal endeavor. Thus, access to the vote for Black males, but not women, was accepted as a pragmatic compromise, a first step. It was better for the whole African American community that one group in the membership had access to suffrage.[86]

Universal suffrage remained especially important to Black women, who saw the vote as a means of securing civil rights for all African Americans.[87] While some whites in the woman suffrage movement continued to support universal suffrage,[88] other suffragists saw the reconsideration of the Nation's social contract as an opening for women's rights. Journalist Eleanor Clift writes that at the end of the Civil War suffragists had made "[a] deal . . . with President Lincoln to push for *woman* suffrage . . . [and the deal] collapsed when Lincoln was assassinated."[89]

The proposed Fourteenth Amendment provided an opportunity for both groups to push for a constitutional right to vote, or at the very least, universal suffrage.[90] At least one version of the proposed amendment included a provision for universal suffrage.[91] In the end, however, there was no reference

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[82] *See supra* Section II.A.

[83] *See supra* note 28.

[84] *See supra* note 34–37 and accompanying text.

[85] TERBORG-PENN, *supra* note 46, at 23.

[86] *See id*.

[87] *Id.* at 36.

[88] *See* Siegel, *supra* note 11, at 460–61; *see also* Reva Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 969–74 (2002).

[89] CLIFT, *supra* note 68, at 28 (emphasis added).

[90] Garth E. Pauley, *W.E.B. DuBois on Women's Suffrage: A Critical Analysis of His Crisis Writings*, 30 J. BLACK STUD. 383, 385 (2000).

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> On January 29, 1866, Congressman Thaddeus Stevens, leader of the Radical Republicans in the House, presented one of the first of several hundred petitions for universal suffrage on the floor of the House of

to Black or woman suffrage in the Fourteenth Amendment. The only mention of suffrage is found in the second clause of that Amendment dealing with determining the apportionment within the House of Representatives.[92]

After ratification of the Fourteenth Amendment without any expansion of suffrage, some Black and white women's suffragists continued to push for expansion of the Amendment to include universal suffrage. In 1871, for example, suffragist Victoria Woodhull, speaking before the House Judiciary Committee, argued, unsuccessfully, that women have the right to vote under the Fourteenth Amendment to the United States Constitution.[93] Congress resisted, and Supreme Court decisions undermined their efforts.

In 1873, the Supreme Court, in the *Slaughter-House Cases*, quickly narrowed the scope of the Amendment limiting scope of the Privileges and Immunities Clause[94] to federal, as opposed to state legal rights.[95] Then in 1875, the Supreme Court, in *Minor v. Happersett*, ruled that the Fourteenth Amendment does not grant women the right to vote.[96] A year later the Court, in *United States v. Cruikshank,* further clarified *Minor*, ruling that

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> Representatives. Signers of this petition included Stanton, Anthony, and members of the former Women's Loyal National League, Ernestine Rose, Lucy Stone, and Antoinette Brown Blackwell. This exceptional combination of signatures represents some of the period's foremost advocates for suffrage and abolition.

Universal Suffrage, CENTER FOR LEGISLATIVE ARCHIVES (June 25, 2019), https://www.archives.gov/legislative/features/suffrage [https://perma.cc/S4DM-GN29].

[92] U.S. CONST. amend. XIV, § 2, cl. 3. The third clause of section 2 eliminates the three-fifths clause in article I, section 2, clause 3, of the Constitution as a means of determining representation and threatens to reduce representation if "any . . . *male* inhabitant[ ]" is denied the vote. *Id.* (emphasis added). The three-fifths clause reads:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, *three fifths* of all other Persons.

U.S. CONST. art. I, § 2, cl. 3 (emphasis added). In other words, enslaved African Americans would be counted for representation purposes as three-fifths of a person.

[93] TETRAULT, *supra* note 70, at 56–59.

[94] U.S. CONST. amend. XIV, § 1, cl. 2.

[95] Siegel, *supra* note 11, at 461 (citing the Slaughter-House Cases, 83 U.S. 36 (1973)). In that case the Supreme Court ruled that the privileges and immunities of citizenship guaranteed in the Fourteenth Amendment does not apply to legal rights (like voting) associated with state citizenship. *Id.* at 83.

[96] 88 U.S. 162, 178 (1875).

"the right to vote" is not a necessary attribute of national citizenship.[97]

When it became clear that the nation was not prepared to adopt women's suffrage, white suffragists divided over whether to support Black men's suffrage embedded in both the Fourteenth and Fifteenth Amendments.[98] Many early suffragists were abolitionists, but their opposition to Black enslavement did not necessarily mean that they considered Black people as political equals. Prominent suffragists and former abolitionists like Stanton and Anthony of the American Equal Rights Association (formerly the Woman's Rights Association) opposed Black men's suffrage unlinked from women's suffrage.[99] Anthony proclaimed: "I will cut off this right arm of mine before I will ever work for or demand the ballot for the negro and not the woman."[100] Stanton made similar racists remarks saying "she did not believe 'in allowing ignorant negroes and foreigners . . . [to] make laws for her to obey.' "[101]

There were attempts in Congress to include within the Fifteenth Amendment a prohibition of discrimination based on sex as well as race.[102] This issue divided the Republicans.[103] Some Republicans opposed including sex, arguing that male only suffrage "was justified by intrinsic differences between men and women."[104] Others found that linking women's suffrage to that of Black men's suffrage would jeopardize the bill.[105]

Republicans were generally supportive of granting African Americans the vote, but some saw voting as severable from office-

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[97] 92 U.S. 542, 556 (1876).

[98] Pauley, *supr*a note 90, at 385–86.

[99] LICHTMAN, *supra* note 7, at 108.

[100] Pauley, *supr*a note 90, at 386 (citing RHETA CHILDE DORR, SUSAN B. ANTHONY: THE WOMAN WHO CHANGED THE MIND OF A NATION 183 (1928)).

[101] *Id.* at 388 (citing MARI JO BUHLE & PAUL BUHLE, THE CONCISE HISTORY OF WOMEN SUFFRAGE 267 (1978)).

[102] *Congressional Globe*, 40th Cong., 3d Sess. 708 (1866). Republican Sen. Samuel C. Pomeroy of Kansas moved to amend William Stewart's initial proposal to provide that "[t]he right of citizens . . . to vote and hold office shall not be denied or abridged . . . for any reasons not equally applicable to all citizens of the United States." *Id.*

[103] Nina Morais, Note, *Sex Discrimination and the Fourteenth Amendment: Lost History*, 97 YALE L.J. 1153, 1155–58 (1988).

[104] Earl Matz, *The Coming of the Fifteenth Amendment: The Republican Party and the Right to Vote in the Early Reconstruction Era*, 33 (Jan. 17, 2019) (unpublished article), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3317813.

[105] *Id.* at 34.

holding.[106] Thus, voting per se did not necessarily result in gaining a seat at the political table. In fact, there was a heated debate about whether constraints on Black office-holding were needed to ensure passage of the Fifteenth Amendment.[107] In the end the Amendment passed the Senate conference committee without such a limitation.[108]

After ratification of the Fifteenth Amendment prohibiting the denial of suffrage to Black males, some Black and white suffragists remained committed to universal suffrage. White suffragist Mary Olney Brown even "outlined a legal argument for the enfranchisement of Black women under the *Fifteenth* Amendment . . . [since the language] did not explicitly exclude women."[109] This was one of many attempts by some white suffragists to repair the fractured coalition that existed after the Civil War.[110]

Still other woman suffragists were more pragmatic, reasoning that "the nation would only accept one reform at a time."[111] As Black intellectual and political activist W.E.B. DuBois argued, Black leaders understood that "[t]he nemesis of every forward movement in the United States is the Negro [*sic*] question."[112] These white women were consoled by others that if franchise rights were conferred on Black American men, who were lower on the social scale, then women's suffrage would be forthcoming.[113]

Those suffragists unwilling to postpone woman suffrage broke from the American Equal Rights Association resulting in its demise. In 1869 the woman suffrage movement split into two camps, the National Woman Suffrage Association (NWSA), headed by Anthony and Stanton, which strongly opposed the exclusion of women in the two reconstruction amendments; and the American Woman Suffrage Association (AWSA), headed by Lucy Stone, which supported universal suffrage, and was "willing

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[106] Paul Finkelman, *Original Intent and the Fourteenth Amendment: Into the Black Hole of Constitutional Law*, 89 CHI.-KENT L. REV. 1019, 1026–27 (2014).

[107] Matz, *supra* note 104, at 44-45.

[108] *Id.* at 45.

[109] Powell & Gear-Rich, *supra* note 78, at 140.

[110] *See id.*; *see also id.* at 133.

[111] Pauley, *supra* note 90, at 386.

[112] *Id.* at 394.

[113] *Id.* at 386–87.

to temporarily support Black [men's] suffrage alone while the opportunity for success existed."[114]

The Fifteenth Amendment, however, did not result in widespread Black enfranchisement in fact. There was a brief period of access to the ballot following ratification of the Amendment, followed by an "era of disenfranchisement of [B]lack men by legalisms and by terror."[115] Ironically, Black disenfranchisement in the South accompanied "an era which saw increasing support for the enfranchisement of [white] women."[116] In the late 1880s, according to historian Elna Green, lawmakers in the South briefly considered enfranchising white women to counter potential Black male voters, "but only if enfranchisement . . . would provide a foolproof—and constitutional—guarantee of white supremacy."[117] The effort proved unnecessary when Congress repealed several federal Reconstruction-era laws enacted to protect Black male voters.[118]

While the suffragist movement continued, Black and white suffragists proceeded on increasingly separate tracks. With the rise of an ideology of white supremacy as reflected in Jim Crow laws and practices throughout the country, Black women were increasingly denied a voice in white suffragists organizations.[119] In some southern states Black women were excluded from the organization all together.[120] Black women started their own organizations whose goals were much broader.[121] Black suffragists pushed for women's suffrage *and* the re-enfranchisement of Black men in the South.[122] Thus, the "women's organizations in the [early twentieth century], like their nineteenth-century predecessors, remained largely segregated."[123] The next Part of this Article discusses the final

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[114] *Id.* at 390.

[115] Jean Fagan Yellin, *DuBois' "Crisis" and Woman's Suffrage*, 14 MASS. REV. 365, 368 (1973).

[116] *Id.*

[117] GREEN, *supra* note 54, at 11.

[118] Franita Tolson, *What Is Abridgment?: A Critique of Two Section Twos*, 67 ALA. L. REV. 433, 467 (2015).

[119] GREEN, *supra* note 54, at 10.

[120] TERBORG-PENN, *supra* note 46, at 56.

[121] *Id.*

[122] *Id.*

[123] Podolefsky, *supra* note 1, at 221–22 (quoting LEILA J. RUPP & VERTA TAYLOR, SURVIVAL IN THE DOLDRUMS: THE AMERICAN WOMEN'S RIGHT MOVEMENT, 1945 TO THE 1960S 154–55 (1987)).

push for the Nineteenth Amendment and the racial overtones of the political debates.

V. 1890–1920: THE RESTORATION ERA AND THE NINETEENTH AMENDMENT

By the end of the Nineteenth Century public sentiment for woman suffrage was growing. A few states, primarily in the west, already allowed women unrestricted access to the vote.[124] In 1890 the two branches of the woman suffrage movement merged into the National American Woman Suffrage Association (NAWSA).[125] The organization's goal was a constitutional amendment extending the franchise to women.[126] White suffragists in the North and South supported what they called "educated suffrage," which would restrict the vote to women who could read and write English.[127] "Educated" suffrage" would effectively deny the franchise to Blacks and poor whites in the South, where illiteracy rates were high.[128]

In counterpoint, also in 1890, Henry Cabot Lodge introduced a Federal Elections Bill designed to provide "federal supervision of all phases of registration and voting in national elections if 100 people within any given congressional district requested federal intervention."[129] Because the bill would have applied nationwide, it attracted critics from the North and South.[130] The real goal, however, was to attack election fraud targeting southern Black male voters.[131] The Federal Election Bill would have

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[124] Approximately fifteen states or territories (Wyoming, Colorado, Utah, Idaho, Washington, California, Arizona, Kansas, Oregon, Montana, Nevada, New York, Michigan, Oklahoma and South Dakota) granted women full voting rights before the Nineteenth Amendment. *Centuries of Citizenship: A Constitutional Timeline* (Jan. 1, 1919), https://constitutioncenter.org/timeline/html/cw08_12159.html [https://perma.cc/L4VT-9FUL]. Before the mid-nineteenth century women briefly voted in New Jersey from 1773 until 1807. LICHTMAN, *supra* note 7, at 99–100.

[125] JONES, VANGUARD, *supra* note 32, at 152.

[126] *Id.*

[127] TERBORG-PENN, *supra* note 46, at 108.

[128] National Center for Education Statistics (1993), https://nces.ed.gov/naal/lit_history.asp [https://perma.cc/6KJ6-9ZCL]. "[I]n the late 19th century and early 20th century, illiteracy was very common. In 1870, 20 percent of the entire adult population was illiterate, and 80 percent of the black population was illiterate. By 1900 the situation had improved somewhat, but still 44 percent of blacks remained illiterate." *Id.*

[129] Tolson, *supra* note 118, at 460

[130] *Id.* at 463.

[131] *Id.*

strengthened existing federal legislation designed to protect the Black vote.[132]

Unsurprisingly, the bill did not pass, but southern states, in anticipation of federal oversight, "engag[ed] in the systematic and 'legal' disenfranchisement of African-Americans and poor whites, amending their constitutions and adopting laws that would render the bill largely nugatory."[133] Legal scholar Franita Tolson writes that the defeat of the Federal Elections Bill "was followed by the repeal of most of the Reconstruction-era legislation in 1894 after the Democrats regained control of Congress."[134] The former southern confederates, now largely Democrats, were "restored" to power.

By the early twentieth century some leaders within the woman's suffrage movement openly espoused granting white women the vote to offset the Black male vote.[135] The racist and xenophobic sentiments of many in the NAWSA were exemplified by a 1903 resolution passed by the organization, noting that "there were more white native-born women who could read and write than all Black and foreign-born voters combined, so that 'the enfranchisement of such women would settle the vexed question of rule by literacy, whether home grown or foreign.' "[136] Thus, the main goal of many suffragists was obtaining the vote for native-born *white* women.

This sentiment was echoed in elite law journals[137] and Congress. As one commentator recently wrote:

> [I]n many ways, the 19th Amendment was a debate about the 15th Amendment, which decreed that a citizen's right to vote could not be "denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." On a swelteringly hot June day 100 years ago,

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> [T]he legislation would have strengthened the system of federal oversight already in place in the southern states as a result of federal elections bills passed between 1870 and 1872. While the purpose of the original federal election laws was to protect African-American voters, enforcement efforts quickly shifted to helping secure Republican majorities in northern swing states in presidential elections.

Id. at 464.

[133] *Id.* at 466.

[134] *Id.* at 467.

[135] TERBORG-PENN, *supra* note 46, at 110.

[136] *Id.* (internal citation omitted).

[137] *See, e.g.*, John R. Dos Passo, *The Negro Question*, 12 YALE L.J. 467 (1903) (arguing for the repeal of the Fifteenth Amendment).

> senators invoked states' rights, their hatred of the 15th Amendment and their desire to keep African Americans from the polls as reasons to oppose the Susan B. Anthony Amendment.[138]

Nevertheless, from the 1890s to ratification "Black women and Black men . . . remained in the woman suffrage movement throughout the struggle, fighting both racism and sexism simultaneously."[139] Again, this was a pragmatic alliance. If woman suffrage was legalized, then Black women and men in the North might use their collective political power to restore the vote to southern Blacks.

"As women's suffrage movement gained momentum [again] in the 1900s, some Southern congressmen introduced measures to repeal the Fifteenth Amendment."[140] Black women understood that any rights conferred by Nineteenth Amendment also depended on the continued validity of the Fifteenth Amendment as they were denied access to the vote because of their gender *and* race. So Black suffragists stressed the importance of both Amendments.

Even when woman suffrage was not the issue, debates about any extension of the vote were framed by the continued resistance of southerners to both the Fifteenth Amendment and the Black vote. During the debates in 1911 on the Seventeenth Amendment, providing for the popular election of U.S. Senators,[141] Southern Democrats tried unsuccessfully to amend the Elections Clause of Article 1, Section 4, Clause 1, of the Constitution which delegates to the states, without relinquishing total congressional responsibility, "[t]he Times, Places and Manner of holding Elections" for members of Congress.[142]

Next, the Democrats attempted, again unsuccessfully, to end any federal oversight in Senate elections. Proposing an amendment, the so-called "race rider," Democrats did not specifically mention the partial repeal of the Fifteenth

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[138] Kimberly A. Hamlin, *How Racism Almost Killed Women's Right to Vote*, Wash. Post (June 4, 2019) https://www.washingtonpost.com/outlook/2019/06/04/how-racism-almost-killed-womens-right-vote/.

[139] TERBORG-PENN, *supra* note 46, at 4.

[140] Hamlin, *supra* note 138.

[141] U.S. CONST. amend. XVII.

[142] U.S. CONST. art. 1, § 4, cl. 1.

Amendment, but they made their intent clear.[143] In the words of one Republican Senator:

> Not content with the success obtained in suppressing the negro vote through a curious variety of State constitutional provisions and legislative devices. . . . The adoption of the [race rider] would give substantial though limited national sanction to the disenfranchisement of the Negroes in the Southern States. In their disenfranchisement we now passively acquiesce . . . some Senators are not content; they ask us to actually strip Congress of the power to question election methods and actions . . . and the Nation . . . consent to the permanent suppression of more than a million votes at elections to choose Senators.[144]

Resistance to the Black vote continued during the debates on the Nineteenth Amendment. Senator James K. Vardaman from Mississippi, an opponent of the Fourteenth *and* Fifteenth Amendments, won his office on a campaign promise to repeal the Fifteenth Amendment.[145] Vardaman advocated "wip[ing] away federal provisions for equal protection, due process, and voting rights . . . to stop the 'Black peril.' "[146] When his direct measures did not pass, Vardaman tried to use the woman suffrage movement to accomplish his purpose by proposing a "compromise: the repeal of Black voting rights in exchange for women's suffrage."[147]

As an alternative, Vardaman supported Elizabeth Cady Stanton's Equal Rights Amendment, "add[ing] a new clause: '*but in all other respects the rights of citizens to vote shall be controlled by the state where they reside*,"[148] that permitted the disenfranchisement of black voters by whatever means. In other words, supporting woman suffrage at the expense of Black suffrage. Although Vardaman's effort failed, nineteen of the sixty-seven senators voted for his proposal.[149] Similarly, Mississippi's other senator, John Sharp Williams, proposed to insert the word *white* before woman in the Nineteenth

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[143] Terry Smith, *Reinventing Black Politics: Senate Districts, Minority Vote Dilution and the Preservation of the Second Reconstruction*, 25 HASTINGS CON. L.Q. 277, 292 (1998).

[144] *Id.* at 293–94 (citing 46 CONG. REC. 1218–19 (1911) (statement of Sen. Carter)).

[145] JONES, VANGUARD, *supra* note 32, at 163.

[146] *Id.* at 166–67.

[147] *Id.* at 168–69.

[148] *Id.* (emphasis added).

[149] *Id.* at 169.

Amendment.[150] The Senate rejected this proposal by a vote of forty-four to twenty-one.[151]

South Carolina Senator Ellison "Cotton Ed" Smith, was more direct, "thunder[ing] 'the southern man who votes for the Susan B. Anthony Amendment votes to ratify the Fifteenth Amendment.' "[152] He and other white southerners feared the federal government might, with the technical enfranchisement of Black women in the South, feel compelled to finally enforce, again, the Fifteenth Amendment.[153] In the end, the Nineteenth Amendment was passed by Congress, and ratified by the requisite number of states.[154] In 1929, the Supreme Court ruled in *Leser v. Garnett* that the Amendment had been constitutionally established.[155]

Historian Martha Jones echoes the conclusion of other scholars that "[t]he historical relationship between African American men and [w]hite suffragists created bitter sentiments among many Blacks that had not yet subsided."[156] While white suffragists were unsuccessful in securing woman suffrage through the Fourteenth and Fifteenth Amendments, Black women viewed these Amendments as advancements for their race. Thus, "the suffrage struggles of [B]lack women and men become connected."[157]

The struggle to vote after ratification of the Nineteenth Amendment continued for Black women. They realized that constitutional amendments offered little protection when "so much about voting rights depended upon state law and the discretion of local officials. . . . [m]ore than anything, [ratification

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[150] *Id.* at 168–169.

[151] Woman Suffrage Centennial, Part II: The Siege of the Senate, UNITED STATES SENATE, https://www.senate.gov/artandhistory/history/People/Women/Part2_Siegethe Senate.htm [https://perma.cc/3HDD-FYWY] (last visited Mar. 30, 2021).

[152] Hamlin, *supra* note 138.

[153] *Id.*

[154] Woman Suffrage Centennial, Part III: The Last Trench, UNITED STATES SENATE, https://www.senate.gov/artandhistory/history/People/Women/Part3_TheLa stTrench.htm [https://perma.cc/Y2XE-QEM2] (last visited Mar. 30, 2021).

[155] *See generally* Leser v. Garnett, 258 U.S. 130 (1922).

[156] Pauley, *supr*a note 90, at 384. Black feminist bell hooks, for example, writing in 1981, suggested that white women's early alliance with Blacks for access to the franchise had more to do with political advantage for them—white woman suffrage—rather than any belief that Black men should have the vote. *Id*. at 385 (citing BELL HOOKS, AIN'T I A WOMAN 3 (1981)).

[157] Liette Gidlow, *The Sequel: The Fifteenth Amendment, The Nineteenth Amendment, and Southern Black Women's Struggle to Vote*, 17 J. GILDED AGE & PROG. ERA 433, 435 (2018).

of the Nineteenth Amendment] marked a turn: Black women were the new keepers of voting rights in the United States."[158] The next Part of this Essay briefly discusses this point.

VI. THE AFTERMATH

Months before ratification of the Nineteenth Amendment, the NAWSA dissolved, becoming the League of Women Voters, which focused on voter education.[159] Once again the woman suffragist movement split, with some advocates satisfied that their goal had been accomplished. Others continued the struggle. As some feared, the ratification of the Nineteenth Amendment did not result in a dramatic increase in women voters.[160]

Fewer women than men voted in the post-1920 elections.[161] A study in the early 1940s of the eight southern states attributed part of the problem to the poll tax where, in states like Alabama, two men were registered for every one woman.[162] The study suggested that the difference in voting rates had more to do with sexist laws and women's perilous economic position than lack of interest in politics.[163] After ratification of the Nineteenth Amendment, for example, many white women in the Southfound the poll tax an obstacle to exercising the franchise.[164] Registrars refused to accept payment from white women, and others eliminated ballots cast by women under the pretext that they had not paid their taxes.[165] Southern Black women were burdened

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[158] JONES, VANGUARD, *supra* note 32, at 202.

[159] *Id.* at 179–80.

[160] For a discussion of this era and the failure of white suffragists to fully realize the goals of woman's suffrage after ratification of the Nineteenth Amendment, *see generally* PAULA MONOPOLI, CONSTITUTIONAL ORPHAN: GENDER EQUALITY AND THE NINETEENTH AMENDMENT (2020).

[161] Jennifer M. Piscopo, *How Women Vote: Separating Myth from Reality,* SMITHSONIAN MAGAZINE (Oct. 6, 2020), https://www.smithsonianmag.com/history/how-have-women-voted-suffrage-180975979/ [https://perma.cc/2GP7-2J3A].

[162] Podolefsky, *supra* note 1, at 197.

[163] *Id.* at 197–98.

[164] *Id.* at 193. The lingering effects of coverture also made payment of the tax more difficult for women. In many states married women were not entitled to the wages of her spouse or children. Men remained the almost exclusive owners of property. *Id*. Most women who worked outside the home needed all of their income to support themselves and their families. This was especially true for African American women who earned even less than employed white women. *Id*. at 198. Thus, "the reality of women's economic status showed that they were extremely vulnerable to a charge on the franchise." *Id*. at 197.

[165] *Id.* at 189–90.

not only by the poll tax requirement, but also by outright racial discrimination by local officials.[166]

There was little effort by the existing power structure of the time to change this system, especially after the Supreme Court, in a 1937 case, *Breedlove v. Suttles*, refused to strike down a poll tax exempting all women who did not register to vote, relying in part on the separate sphere arguments used to justify the exclusion of women from politics.[167] According to legal scholar Rogers Smith, the Georgia "law obviously rewarded women for not voting and gave husbands an incentive to discourage their wives' political interests."[168]

As with the fight for woman's suffrage, there was no consensus among the coalition of women who attacked the poll tax about long-term goals. Some women only wanted to repeal the tax.[169] Others saw the repeal effort as one aspect of the larger movement to "improve conditions for women" or even broader, advocacy for women's civil rights.[170]

Initially, middle- and upper-class white women composed the bulk of the anti–poll tax movement.[171] Black club women like Mary Church Terrell of the National Association of Colored Women (NACW) and Mary McLeod Bethune of the National Council of Negro Women (NCNW) worked with the white-led National Committee to Abolish the Poll Tax (NCAPT) to remove the tax.[172] But these women largely worked separately because, like in past movements, integrated groups of women supporting abolition of the poll tax were often harassed.[173]

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[166] Gidlow, *supra* note 157, at 443. One registrar in Oklahoma resigned when a Black woman tried to register. *Id.*

[167] 302 U.S. 277 (1937). The Petitioner, a poor white man, cleverly challenged the constitutionality of the poll tax based on gender (citing the Nineteenth Amendment) and poverty (citing the Fifteenth Amendment). *Id.* at 280.

[168] Podolefsky, *supra* note 1, at 195 (citing Rogers M. Smith, *"One United People": Second-Class Female Citizenship and the American Quest for Community*, 1 YALE J.L & HUMAN. 229, 280 (1989). Further, leading up to the ratification of the Eighteenth Amendment, political forces like the brewing and liquor industries "engage[d] in election fraud and bribery . . . of various state referenda" to thwart woman's suffrage because of the close association between the temperance and woman's suffrage movements. This attempt to undermine woman's suffrage continued for decades after the ratification of the Nineteenth Amendment. *Id.* at 200–01.

[169] Podolefsky, *supra* note 1, at 209.

[170] *Id.*

[171] *Id.*

[172] *Id.* at 222.

[173] *Id.* at 223.

Sexism and racism operated separately and in tandem to discourage joint public efforts among the women.[174]

> Some white women's groups attempted to distance themselves from the race-baiting they saw as an obstacle to their campaign. In a move sadly reminiscent of the early suffragists, some attempted to soothe white supremacist fears with reassurances that removal of the poll tax would help white women and not increase the Black vote.[175]

Nevertheless, the movement influenced many states to repeal their poll tax laws, and by 1964 only four southern states had such laws.[176] In that year the states ratified the Twenty-Fourth Amendment, which prohibits "conditioning the right to vote in federal elections on payment of a poll tax or other types of tax."[177] That Amendment, however, did not reach state and local elections. Then, a year later, despite the sweeping provisions of the Voting Rights Act of 1965, Congress resisted outlawing use of the poll tax in state elections.[178]

Finally, in 1966, the Supreme Court struck down Virginia's poll tax law in *Harper v. Virginia Board of Elections*, overruling *Breedlove*.[179] Tellingly, the plaintiffs, four women and one man, were all African Americans.[180] The plaintiffs in *Harper* described the "impact of poverty on women as a class and on women of color in particular:" the intersection of gender, class and race.[181] But by 1966, "[t]he poll tax had outlived its economic effectiveness . . . . [S]heriffs were more often disenfranchising African Americans by *refusing* to accept payment" of the tax.[182]

VII. CONCLUSION

Terborg-Penn writes that in the end "the struggle for suffrage among African American women was different from that of white women and African American men, because racism did not limit white women and sexism did not limit African

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[174] *Id.* At a 1938 conference in Birmingham, for example, Black people and white people sat separately with local police heavily monitoring for violations of state segregation laws. *Id*. at 224.

[175] *Id.* at 225 (citations ommitted).

[176] *Id.* at 227.

[177] *See* U.S. CONST. amend. XXIV.

[178] Voting Rights Act of 1965, 79 Stat. 437 (1965).

[179] 383 U.S. 663, 668–69 (1966).

[180] Podolefsky, *supra* note 1, at 235 n.212.

[181] *Id.* at 235–36.

[182] *Id.* at 237 (emphasis added).

American men."[183] After ratification of the Nineteenth Amendment many white women, but few African American women, gained access to the franchise.[184] Some well-known white suffragists, like Alice Paul, were unsympathetic to claims of Black women about their disenfranchisement in the South.[185]

In 1964, Chief Justice Earl Warren wrote in *Reynolds v. Sims* that "the right to vote freely for the candidate of one's choice is . . . the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."[186] Yet, in this country race and a "decentralized, federalist approach to voting rights has led to a self-perpetuating system of voting inequality" that disproportionately impacts African Americans because of a distinct anti-black bias.[187] Throughout the twentieth century, and into the twenty-first century, voter suppression and disenfranchisement efforts continue to target Black voters—women and men—because of their race, not their sex. State and federal courts, including the United States Supreme Court, participated in this effort.[188]

That same year Fannie Lou Hamer, a civil rights advocate from Mississippi, and part of the Mississippi Freedom Democratic Party (MFDP), challenged the seating of the regular delegation from the state at the Democratic National Convention, arguing that they had been selected without any in-put from Black Mississippians.[189] Her testimony before the Credentials Committee was broadcasted live on national television.[190]

A working-class, rural Black woman, Mrs. Hamer testified about the economic hardship she experienced when she tried to register to vote; and about the physical and sexual violence she suffered for attempting to register other Black voters.[191] Her testimony recalled the experiences of Black women decades

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[183] TERBORG-PENN, *supra* note 46, at 2.

[184] *See* Gidlow, *supra* note 157, at 435, 441 & 445–46.

[185] *See* Siegel, *supra* note 11, at 471; MONOPOLI, *supra* note 160, at 25–37.

[186] 377 U.S. 533, 555 (1964).

[187] Richard L. Hasen, Opinion, *Bring on the 28th Amendment: Effort by Trump and Allies to Suppress the Vote Are Only Part of the Problem*, N.Y. TIMES (June 29, 2020), https://www.nytimes.com/2020/06/29/opinion/sunday/voting-rights.html.

[188] *See, e.g.*, Shelby v. Holder, 570 U.S. 529 (2013) (striking down Section 5 of the Voting Rights Act).

[189] JONES, VANGUARD, *supra* note 32, at 256–61.

[190] *Id.*

[191] *Id.*

earlier.[192] President Johnson, viewing the televised proceedings, abruptly called a press conference to draw attention away from her powerful testimony, but Mrs. Hamer's full testimony was considered so newsworthy that it was rebroadcast later for the world to see.[193] The 1965 Voting Rights Act was signed into law fourteen months later.[194]

More than forty years after Mrs. Hamer's testimony this country elected Barack Obama, an African American man, as President for two terms. In 2020, the country elected Kamala Harris as the first woman and African American Vice President. Both candidates were elected with the overwhelming support of Black voters.[195] There has been symbolic progress. Nevertheless, the persistence of contemporary voter suppression efforts targeting African Americans illustrate the continued resistance to first-class citizenship for African Americans.

For many Black women, the anniversary of the Nineteenth Amendment is not important. Martha Jones explains that "[Mrs.] Hamer never spoke of the Nineteenth Amendment the way she did of the Fourteenth and Fifteenth Amendments. Yes, she was a woman. But she did not see the terms of the Nineteenth Amendment—the one that constitutionalized women's voting rights—as protecting her."[196]

The fight for a seat at the political table continues. As Mrs. Hamer said in a 1971 speech, "*Nobody's free until everybody's*

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[192] For example, in 1926, when Indiana Little, an African American schoolteacher, tried to register to vote in Birmingham Alabama, she was "sexually assaulted after leading a large crowd to the registrar's office" to register to vote. Brent Staples, Opinion, *When the Suffrage Movement Sold Out to White Supremacy*, N.Y. TIMES (Feb. 2, 2019), https://www.nytimes.com/2019/02/02/opinion/sunday/women-voting-19th-amendment-white-supremacy.html; Lisa Tetrault, *Winning the Vote*, 40 HUMANITIES (Summer 2019), https://www.neh.gov/article/winning-vote-divided-movement-brought-about-nineteenth-amendment [https://perma.cc/9SL3-G3GZ].

[193] JONES, VANGUARD, *supra* note 32, at 259–61.

[194] *Id.*

[195] Paul Taylor, *The Growing Electoral Clout of Blacks is Driven by Turnout, Not Demographics*, PEW RES. GROUP 1–2 (Mar. 2013), https://www.pewresearch.org/wpcontent/uploads/sites/3/2013/01/2012_Black_Voter_Project_revised_1-9.pdf [https://perma.cc/8XQU-2ABM]; Astead W. Herndon, *Biden Wants Black Voter Turnout Similar to Obama's. He'll Need Black Men*, N.Y. TIMES (Aug. 25, 2020), https://www.nytimes.com/2020/08/25/us/politics/black-voters-biden.html; Adam Harris, *What Biden Owes Black Voters*, THE ATLANTIC (Nov. 11, 2020), https://www.theatlantic.com/politics/archive/2020/11/black-voters-saved-joe-bidens-campaign/617055/.

[196] JONES, VANGUARD, *supra* note 32, at 257.

free."[197] Until universal suffragist is a reality, and not merely a legal technicality, no one is free. Mrs. Hamer's words are a challenge to us all.

[197] The title of a speech delivered by Mrs. Hamer at the founding of the National Women's Political Caucus, Washington, D.C., July 10, 1971. Donna Ladd, *Fannie Lou Hamer*, JACKSON FREE PRESS (Apr. 15, 2011), https://www.jacksonfreepress.com/news/2011/apr/15/fannie-lou-hamer/ [https://perma.cc/X3F8-ECX4] (emphasis added) (citing MAEGAN PARKER BROOKS AND DAVIS W. HOUCK, THE SPEECHES OF FANNY LOU HAMER: TO TELL IT LIKE IT IS 134-139 (2010)).