

## Voting Rights in Early America

In colonial America, governors were generally appointed by the crown. Colonists generally voted for the lower house of assemblies. Generally, only white male property holders age 21 and over could vote. In setting up the federal government, the Framers opted only to allow direct election for the House. Senators and the President would be chosen indirectly. In the case of U.S. Senators, state legislatures would make selection. (This procedure remained in place until the 1913 enactment of the 17<sup>th</sup> Amendment.) For the President, electors elected by the people would make the selection.

The U.S. Constitution provided little guidance on who could vote. The major voting provision was Article 2, Section 1, providing that the states set the voting requirements. The Constitution also had little to say about who was, and who was not, a citizen.

### Text Sources

“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.”

-- **The Declaration of Independence**

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

-- **U.S. Constitution, Article 2, Section 1**

“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 Person.”

--**U.S. Constitution, Article 1, Section 2, Clause 3**

“No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.”

-- U.S. Constitution, Article 2, Section 1

### Quotes From Contemporaries



“The same reasoning which will induce you to admit all men who have no property, to vote, with those who have ... will prove that you ought to admit women and children; for, generally speaking, women and children have no good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent upon others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents. ... Depend upon it, Sir, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand the vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing will demand an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions and prostrate all ranks to one common level.”

-- John Adams

*Image from Wikimedia Commons*



“Today a man owns a jackass worth fifty dollars and he is entitled to vote; but before the election, the jackass dies. The man in the meantime has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers – but the jackass is dead, and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?” -- Benjamin Franklin

*Image from Wikimedia Commons*

## Discussion Questions

1. How do you think citizenship was defined during this period? Who had the right to vote?
2. In your opinion, why didn't the Framers list the right to vote as a "self-evident" rights of man? If, as the Declaration of Independence proclaims, "All men are created Equal," why not extend the franchise to all?
3. While not specifying who was and was not a citizen, and who could or could not vote, the Constitution did contain an Apportionment Clause for determining state representation in the federal government and federal taxes. In that Apportionment Clause, Indians were excluded, and non-free persons, which was most of the black population at the time, were counted only as three fifths a person. Why do you think the Framers put this clause in the Constitution? What effect, if any, do you think it had on the struggle to achieve voting rights for these groups?
4. John Adams argues that the independence of will is a prerequisite to granting the franchise – do you agree? Why or why not? Do you think there are other reasons that those with the vote may have wanted to deny the franchise to those without property? Why do you think Adams couched his argument the way that he did? Is Benjamin Franklin's response to the property requirement argument effective?
5. As mentioned above, women generally could not vote during this period of American history. What constitutional text, if any, justified denying women the franchise? Do you think an early American would have recognized a woman as a citizen, given the fact that she could not vote?

## Civil War and Post-Reconstruction Voting Rights

Through the 1840s, the general trend among states was broadening the franchise. However, in reaction to a wave of Irish and German immigration, the nativist, anti-Catholic No-Nothing Party arose in the 1850s, advocating imposing literacy tests and other means of restricting the voting rights of immigrants who became citizens. The No-Nothings gained control of the Massachusetts Legislature, and the state passed a literacy test and a law requiring that naturalized citizens be a resident of the state for two years before gaining the right to vote.

With the eruption of the Civil War, the No-Nothings faded away as the nation moved on to the all-consuming issue of slavery. After the Union's victory, the debate changed to the rights to which the former slaves were entitled. The answer came with the passage of the Fourteenth and Fifteenth Amendments, which conferred citizenship on all male African Americans born in the United States and also secured their right to vote. After this broadening of the franchise, states in the South began chipping away at African Americans right to vote such as implementing poll taxes and literacy tests in the late 1800s and early 1900s. During this period, which lasted through the Civil Rights Movement of the 1960s, the ability of African Americans to exercise their right to vote depended largely upon where in the country they lived.

### ***Dred Scott v. Sandford (1857)***

In a 7-2 decision, the U.S. Supreme Court found against an African American slave who sought his freedom after living with his master in areas where slavery was illegal. The opinion, authored by Chief Justice Judge Roger B. Taney, galvanized the anti-slavery movement and helped trigger the Civil War. The Court concluded that any person descended from Africans, slave or free, was not and could not be a citizen of the United States.



### **The Emancipation Proclamation**

[O]n the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom. --Issued January 1, 1863

*Image from Library of Congress*

### **The Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. ...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

--Adopted July 9, 1868

### **The Fifteenth Amendment**

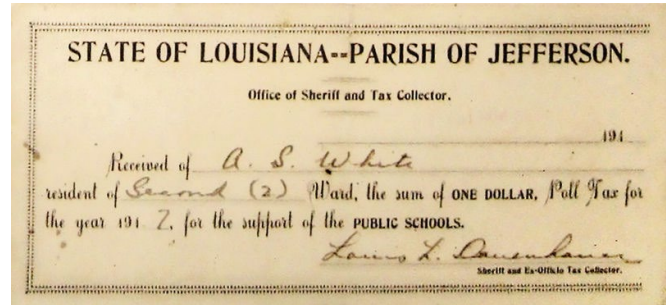
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or

previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

--Ratified Feb. 3, 1870

*Poll tax receipt image from Wikimedia Commons*





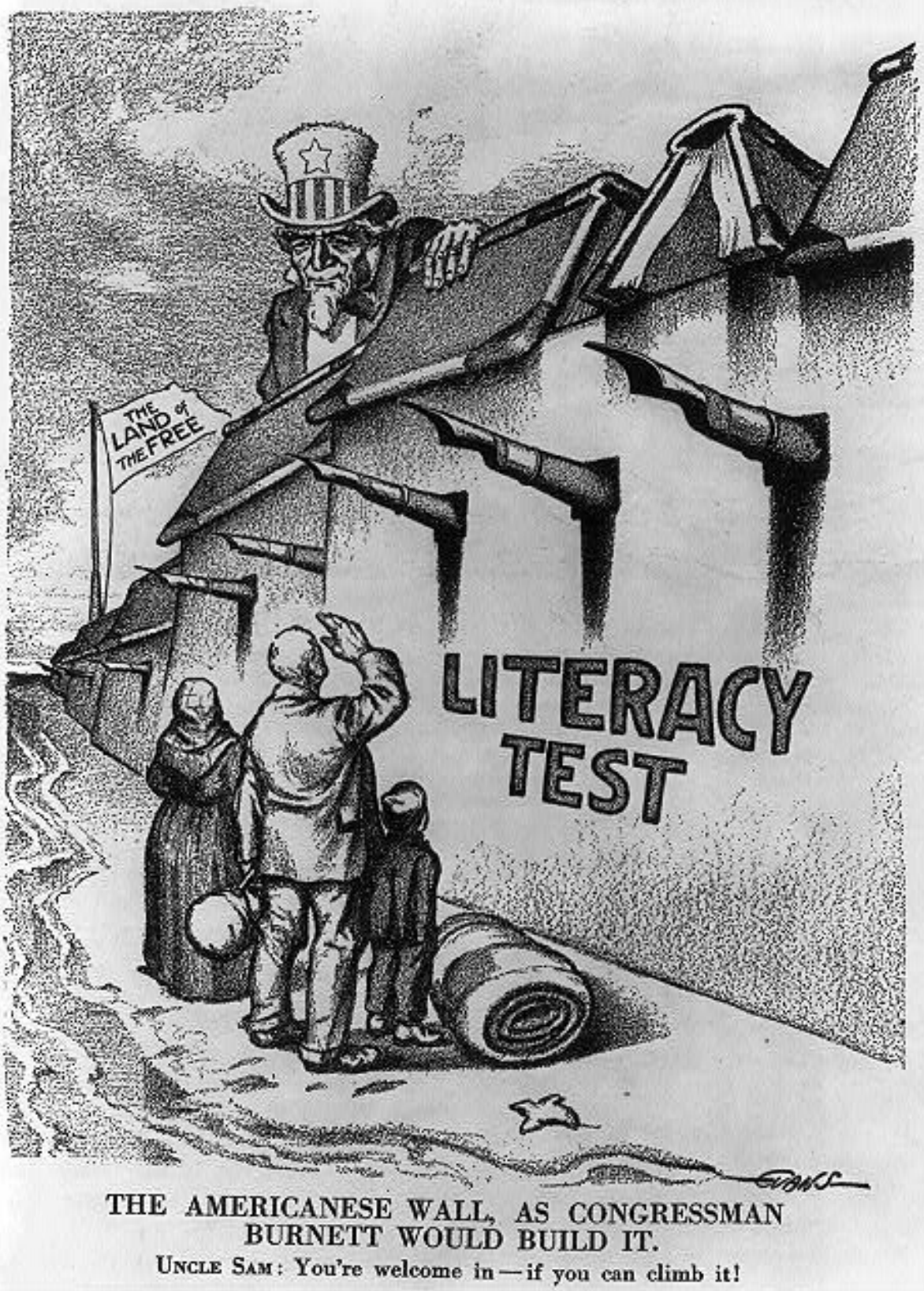


Image from Library of Congress

## Discussion Questions

1. How do you think citizenship was defined during this period? Who had the right to vote?
2. Poll taxes continued to exist in one form or another until the enactment of the Twenty-Fourth Amendment in 1964. Literacy tests remained in some areas of the South until the Civil Rights Movement of the 1960s. What problems do you see with having a poll tax or a literacy test as a prerequisite to voting? Can any argument be made that poll taxes were unconstitutional even before 1964?
3. What did the Emancipation Proclamation say about the legal status of the former slaves? How did the Fourteenth Amendment change the analysis of who is a citizen? Given the broad guarantees of the Fourteenth Amendment barring states from denying citizens the privileges and immunities of citizenship and the equal protection of the laws, why was the Fifteenth Amendment necessary?
4. What do you think of the language of the Fifteenth Amendment? How might you have written it differently if you had been on the drafting committee?



## Non-White Americans and the Vote During the Early 1900s

Although all citizens of the United States technically received the right to vote with the passage of the Fifteenth Amendment, for many non-white males, this right, along with many other important civil rights was denied well into the 1900s. The late 1800s and early 1900s saw many laws passed and much court-room litigation in the struggle to define the contours of the right to vote and other rights (engaging in certain professions, owning property, returning to the country) for non-white Americans.

### **Elk v. Wilkins (112 U.S. 94 (1884))**

*Elk* involved a challenge by a Native American who was born on a reservation but had subsequently renounced his tribal affiliation and claimed U.S. citizenship. The *Elk* Court held that a Native American cannot claim citizenship without the consent of the U.S. government and therefore, cannot vote.

“Indians born within the territorial limits of the United States, members of and owing immediate allegiance to one of the Indiana tribes (an alien though dependent power), although in a geographical sense born in the United States, are no more "born in the United States and subject to the jurisdiction thereof," within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or other public ministers of foreign nations.”

### **Chinese Exclusion Act (1882)**

Passed by Congress in 1882, the Chinese Exclusion Act was one of the most expansive restrictions on immigration into the United States. The law prohibited the immigration of all Chinese laborers for ten years. Chinese laborers already present in the country were allowed to remain but had to obtain a “return certificate” in order to be granted readmission should they leave.

Frank Leslie's illustrated newspaper, vol. 54 (1882 April 1), p. 96. Image from the Library of Congress.



## **United States v. Bhagat Singh Thind (261 U.S. 204 (1923))**

Bhagat Singh Thind was a Hindu man born in Punjab, India, who immigrated to the United States and settled in Oregon. Thind was granted citizenship by the federal district court, but that citizenship was objected to by the Naturalization Examiner. Thind argued that he qualified as a “white person” due to his Aryan heritage and therefore, should be granted citizenship under the 1790 statute regulating naturalization. The Court ruled the “Aryan theory” of ethnology and determined that “white people” should be defined as it is understood in the popular sense and that non-whites born outside of where subject to naturalization regulations (in this case, a quota limiting the number and categories of Asians eligible for naturalization).

The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of that day was almost exclusively from the British Isles and Northwestern Europe. When they extended the privilege of American citizenship to "any alien being a free white person," it was these immigrants they must have had in mind. It was the descendants of these, and other immigrants of like origin, who constituted the white population of the country when § 2169, reenacting the naturalization test of 1790, was adopted, and, there is no reason to doubt, with like intent and meaning.

## **Indian Citizenship Act of 1924**

The Indian Citizenship Act, passed by Congress in 1924, declared all non-citizen Native Americans born in the United States to be citizens. By this point, many indigenous Americans were already given citizenship rights by other means including service in the armed forces or giving up their tribal affiliation. However, given that voting rights are controlled by individual states, the Act did little to ensure full suffrage rights for Native Americans.

"BE IT ENACTED by the Senate and house of Representatives of the United States of America in Congress assembled, That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.  
(Approved June 2, 1924)"





*President Coolidge with Osage Indians at a White House ceremony. Image from Library of Congress.*

### Discussion Questions

1. As more non-white male groups were extended the right of citizenship, how did the Courts and legislatures separate citizenship from voting rights?
2. During this period, a division between the rights for African Americans and other non-white Americans appeared. What do you think justified such an approach? Do you think this division helped or hurt minority groups in obtaining full citizenship rights?
3. In what ways did the plight of Native Americans mirror that of other "non-whites" in their struggle to obtain citizenship and voting rights? In what ways was it different? Prior to the Indian Citizenship Act, was either group in a better position than the other legally?
4. How do you think citizenship was defined during this period? Who had the right to vote?

## Women's Suffrage Movement

Some historians believe that during the early colonial period, women, particularly those who owned large amounts of land, voted. But once the states began to draft their own constitutions, women's suffrage was substantially narrowed; this was endemic of other shifts in policies and practices that had once been gender-neutral, including landownership, ability to access education, and entrance into professions. During the mid-1800s, women and civil rights advocates began to lobby on behalf of gender-equality and legal rights for women. This group included Elizabeth Cady Stanton, Lucretia Mott, and Susan B. Anthony. For some in the women's equality movement, the right to vote was central; for others, it was merely a possible added benefit. Many women's equality advocates drew connections and parallels between their status and that of former slaves.

### Seneca Falls Woman's Rights Convention

This influential convention, held in late-July 1848, is seen by many as the official start of the Women's Suffrage Movement. Featuring Elizabeth Cady Stanton and Frederick Douglass, the Convention produced a Declaration of Sentiments, the rallying call for women's rights, including the right to vote. The Sentiments listed included:

- *He has never permitted her to exercise her inalienable right to the elective franchise.*
- *He has compelled her to submit to laws, in the formation of which she had no voice.*
- *He has withheld from her rights which are given to the most ignorant and degraded men - both natives and foreigners.*
- *Having deprived her of this first right as a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.*
- *He has made her, if married, in the eye of the law, civilly dead.*

### United States v. Susan B. Anthony

In 1872, Susan B. Anthony registered to vote and then voted in the elections held that November in Rochester, New York. She was then charged with voting "without the legal right to vote in said election district" because she, according to the indictment was "being then and there a person of the female sex." Anthony was subsequently convicted. Before announcing her sentence, the trial judge, Judge Hunt, asked Anthony if she had anything to say:



Yes, your honor, I have many things to say; for in your ordered verdict of guilty, you have trampled underfoot every vital principle of our government. My natural rights, my civil rights, my political rights, my judicial rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this, so-called, form of government.

... May it please your honor, I am not arguing the question, but simply stating the reasons why sentence cannot, in justice, be pronounced against me. Your denial of my citizen's right to vote, is the denial of my right of consent as one of the governed, the denial of my right of representation as one of the taxed, the denial of my right to a trial by a jury of my peers as an offender against law, therefore, the denial of my sacred rights to life, liberty, property ...

## Mark Twain

Humorist Mark Twain could always be counted on for a wry observation on the issues of the day. The following is from a letter he wrote to the St. Louis Missouri Democrat regarding women's suffrage:

Women, go your ways! Seek not to beguile us of our imperial privileges. Content yourself with your little feminine trifles -- your babies, your benevolent societies and your knitting--and let your natural bosses do the voting. Stand back -- you will be wanting to go to war next. We will let you teach school as much as you want to, and we will pay you half wages for it, too, but beware! we don't want you to crowd us too much.

## The Nineteenth Amendment



On August 26, 1920, the state of Tennessee was the 36th state to vote on the ratification of the Nineteenth Amendment, giving women the right to vote. The amendment was the capstone to a lengthy battle; few of the original female suffrage supporters lived to see the Amendment ratified.

"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.  
Congress shall have power to enforce this article by appropriate legislation."

*Woman Suffrage Headquarters, Cleveland, OH, 1913. Image from the Library of Congress.*

## Discussion Questions

1. During the Seneca Falls Convention, many attendees argued that the advocates should remove the right to vote from their priorities (it was a passionate speech by Frederick Douglass that turned the tide on this issue). Why do you think some attendees would have pushed the right to vote to the backburner? How would the fight for women's equality been different had it not included the right to vote?
2. In her speech during her trial, Susan B. Anthony (and many other suffragists) connected the right to vote to citizenship. In what ways had this right been disconnected from the status of citizenship throughout American history? How do you think this impacted the woman's suffrage movement?
3. Do you think that women could have accessed the right to vote without an Amendment to the U.S. Constitution? Why?
4. Elizabeth Cady Stanton, a leading figure in the women's movement and an abolitionist, said that the "The history of the past is but one long struggle upward to equality." Do you agree with her synopsis? Why or why not?
5. How do you think citizenship was defined during this period? Who had the right to vote?

## Voting Rights Act and the Civil Rights Movement

After the Civil War and the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, much work still needed to be done in order to ensure equality for African Americans. Jim Crow laws and disenfranchisement measures continued to relegate African Americans to second-class citizenry. Civil rights leaders engaged a variety of measures in order to make inroads towards equality: courtroom litigation, legislation advocacy, and civil disobedience just to name a few. Landmarks during this period of time include *Brown v. Board of Education*, the Civil Rights Act, and the Voting Rights Act; however, for every step forward, there were still difficulties in implementation and execution that civil rights leaders continue to struggle with today.

### ***Baker v. Carr* (368 U.S. 186 (1962))**

*Baker* involved a challenge to the state redistricting of electoral districts. Because Tennessee had not redistricted since 1901, Shelby County, where the plaintiff lived, had more than ten times the population of some rural districts. The plaintiff argued that population shifts combined with the failure to redistrict had created a situation where the votes in urban districts such as his counted for less than the votes in less populous rural districts. The defendants in *Baker* argued that such issues were political questions and therefore not appropriate for the courts to rule on. The *Baker* Court disagreed, holding that such issues are justiciable issues that federal courts can hear.

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: the question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if, on the particular facts, they must, that discrimination reflects no policy, but simply arbitrary and capricious action.

## Twenty-Fourth Amendment (1964)

Poll taxes started to go into place shortly after Reconstruction as a means to prevent African Americans from exercising their right to vote. In *Breedlove v. Suttles*, a 1937 case, the U.S. Supreme Court upheld the constitutionality of poll taxes. Although many states had stopped using them, by the mid-1900s, a handful of Southern states still used them as a tool of disenfranchisement. In 1966, in *Harper v. Virginia Board of Elections*, the Court held that such taxes were unconstitutional in state elections. Congress proposed the Twenty-Fourth Amendment in 1962.

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

## Voting Rights Act (1965)



The Voting Rights Act was one of the nation's most significant pieces of voting legislation. The Act outlawed all forms of racially discriminatory voting practices that had long plagued African Americans. President Lyndon B. Johnson signed the Act into law one year after signing the Civil Rights Act. In applying the law, the federal government took on the oversight of elections in states and districts with a history of discriminatory voting practices. These covered jurisdictions have to receive permission from the Department of Justice before making any changes to their voting procedures or policies (a practice called "pre-clearance.")

SEC. 2. No voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

*President Johnson, Martin Luther King, Jr., and Rosa Parks at the signing of the Voting Rights Act. Image from the Library of Congress.*

## Northwest Austin Municipal Utility District No. 1 v. Holder (557 U.S. 193 (2009))

*Northwest Austin Municipal Utility District No. 1 v. Holder*, usually referred to as NAMUDO, involved a challenge to Section 5 of the Voting Rights Act. Section 5 outlines the pre-clearance steps required before a covered jurisdiction can change its voting procedures. In the lead up to the case and after oral argument, many Supreme Court watchers thought the Court might be ready to rule that Section 5, or possibly even all of, the Voting Rights Act was no longer constitutionally permissible. However, the Court in an 8-1 decision let Section 5 stand. Instead, the Court ruled on a narrow statutory issue holding that the utility district might be eligible for “bail-out” from being covered by the Voting Rights Act and sent that issue back to the lower courts for consideration. However, in avoiding the Section 5 issue, the justices indicated a possible willingness to overturn Section 5 should the appropriate case be before the bench.

More than 40 years ago, this Court concluded that “exceptional conditions” prevailing in certain parts of the country justified extraordinary legislation otherwise unfamiliar to our federal system. *Katzenbach*, 383 U. S., at 334. In part due to the success of that legislation, we are now a very different Nation. Whether conditions continue to justify such legislation is a difficult constitutional question we do not answer today. We conclude instead that the Voting Rights Act permits all political subdivisions, including the district in this case, to seek relief from its preclearance requirements.



## Discussion Questions

1. The Civil Rights Amendments to the U.S. Constitution (the Thirteenth, Fourteenth, and Fifteenth Amendments) technically eliminated discrimination based on race in all public places, including the voting booth. Why do you think discrimination continued while into the later part of the Twentieth Century? Could the Amendments have been written different to prevent such difficulties in implementation?
2. Civil rights leaders used a variety of tactics to fight for equality, focusing equally on the courts and legislatures. Why do you think this was? Do you think it was effective or did it divide their efforts? Could enfranchisement been obtained through either the courts or legislatures alone? Why?
3. During this period of time, there was an expansion of civil rights in general, not just voting rights. How closely is voting tied to other civil rights? What forces were coming into play in 1960s that led to a meaningful effort to realize rights African Americans had been granted constitutionally a century earlier?
4. Do you agree with Chief Justice Roberts, the author of the *NAMUNDO* majority decision, that we are a much different nation than we were at the passage of the Voting Rights Act. Why or why not? In what ways do you think the Chief Justice thinks the nation has changed?
5. How do you think citizenship was defined during this period? Who had the right to vote?