Yael Bromberg

1 Evolution of the Right to Vote and the Youth Vote: The First and Second Reconstruction

Young people have always been a part of the multigenerational writing of the Story of America. In colonial times, they fought in the Revolutionary War as teenagers, although the colonies adopted from England the legal age of 21 as the minimum voting age.[1] The United States Constitution, passed in 1789, left the determination of suffrage to the states, which largely restricted access to white male property-owners over the age of 21. The slogan "old enough to fight, old enough to vote" was born in this era, in connection with those who fought in the Revolutionary War.[2] This limitation on the franchise since the nation's founding—on account of age, race, gender, and wealth—and, critically, servitude (i. e., the institution of slavery)—set the unstable and arguably volatile framework for the evolution of the right to vote in America; one steeped in ongoing tension between who is and who is not considered a legitimate member of the American family.

This foundation is inherently in tension with the ostensible purpose of the Declaration of Independence, unanimously adopted in 1776, proclaiming that "all men are created equal," and the opening salvo of the United States Constitution—"We The People"—which established the first constitutional republic in the world recognizing that sovereignty arises from *the people*, who consent to be governed pursuant to the rule of law. On the one hand, the evolution of the right to vote is a narrative of resistance for personal autonomy and self-government, such as in the struggle of the colonists to overthrow British control to form a new nation whose core principle is the establishment of democracy by and of the people. On the other hand, it is a narrative of continued subjugation and repression of those deemed less worthy of participating on an equal basis in the enterprise

1 Wendell W. Cultice, *Youth's Battle for the Ballot: A History of Voting Age in America* (Greenwood Press, 1992). See also Todd Andrlik, "How Old Were the Leaders of the American Revolution on July 4, 1776? Younger Than You Think," *Slate*, August 20, 2013, https://slate.com/news-and-politics/2013/08/how-old-were-the-founding-fathers-the-leaders-of-the-american-revolution-were-younger-than-we-imagine.html. I began to develop this concept of youth leaders writing the Story of America in a piece for *Teen Vogue*. See Yael Bromberg, "The Youth Voting Rights Act Would Transform Access for Youth Voters," *Teen Vogue*, July 27, 2022, https://www.teenvogue.com/story/youth-voting-rights-act-what-is.

2 Cultice, *Youth's Battle for the Ballot*, 5.

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of democracy. The tension lays in which members of the body politic are fully recognized as comprising "the people," and how they can effectuate their voice via the vote, and their rights.

This chapter offers an overview of this contested history, specifically as it relates to youth voting rights, and the dynamics of power, politics, race, and age in the fight for American democracy. When young people finally turned to their own enfranchisement via ratification of the 26th Amendment in 1971, it was after they had been actively engaged in the struggle for equality for well over a decade. As I have written elsewhere, "[a]lthough the Twenty-Sixth Amendment is not traditionally considered as being part of the Second Reconstruction (1954–1968), youth were an integral part of the era, and youth enfranchisement in 1971 was its natural outcome."[3]

We begin with the First Reconstruction (1865–1877) to appreciate 1) the continued role that young people have played in writing the Story of America through the Second Reconstruction, and 2) how the basic precepts of the fundamental right to vote and equal protection evolved over time despite the best efforts of voter suppressors. Then, we will examine youth leadership in their own enfranchisement through the ratification of the 26th Amendment, which lowered the voting age to 18 and barred the denial or abridgement of the right to vote on account of age. In so doing, we explore the legislative history of the Amendment within the arc of evolution of the right to vote, and consider the 'special burdens' on the youth vote that the 26th Amendment was intended to address. Finally, we explore the initial challenges in the decade following this expansion of the franchise to 11 million new voters, with an emphasis on the right to establish residency from a campus domicile.

As we explore the history of constitutionalism and evolution of the right to vote with a focus on youth participation in the process—with emphasis on three Historically Black Colleges and Universities (HBCUs): Tuskegee Institute (now Tuskegee University) (Tuskegee, Alabama), North Carolina A&T University (Greensboro, North Carolina), and Prairie View A&M University (Prairie View, Texas)—we examine how these principles and dynamics apply to those host institutions, which were sites of significant voting rights precedent. By offering this analysis with a focus on college communities, undergraduate students can appreciate how their access to the ballot is shaped by the institutions where they live, eat, and study. Thus, this chapter may be read independently and/or alongside the

3 Yael Bromberg, "Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment," *University of Pennsylvania Journal of Constitutional Law* 21 (2019): 1120, https://scholarship.law.upenn.edu/jcl/vol21/iss5/1/.

individual chapters in this book that focus on those institutions' backgrounds and settings, and is intended to offer a larger legal framework to those case studies in the fight for the right to vote.

1 The First Reconstruction: A Brief Moment in the Sun

The bloody Civil War (1861–1865) fundamentally transformed suffrage in America with the ratification of the 13th (1865), 14th (1868), and 15th Amendments (1870). Collectively referred to as the 'Reconstruction Amendments,' they outlaw slavery, establish equal protection under law, and forbid denial or abridgement of the right to vote on account of race, color, or previous condition of servitude.[4]

The Civil War soldiers were young—nearly two-thirds were under 22 and "more than 500,000 were less than 17."[5] Despite the contributions of youth during the war, and those of women who took up increased public roles to treat and support the wounded, the franchise was extended to neither during reconstruction.

As for freed and enfranchised Black men, "[t]he slave went free; stood a brief moment in the sun; then moved back again toward slavery," said historian and sociologist W.E.B. DuBois of the First Reconstruction.[6] The Reconstruction Amendments made immediate gains evident by the election of over 1,500 African American men by their peers to public office on the local, state, and federal level.[7]

The process of democracy during this early period in American history was raucous. Newly eligible voters cast their 'virgin vote,' as the first-time voting experience was commonly called at the time. Young white men inherited the franchise

4 Expansion of the suffrage also occurred prior to the Civil War, and there was some variation among the states. For example, New Jersey granted a limited property suffrage to women and African Americans from 1790 to 1807. In 1790, ten of the nation's then-13 states required property ownership to vote, while only three of the nation's then-31 states did by 1855. See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (Basic Books, a member of the Perseus Books Group, 2009), Table A.3. By 1838, African American men were denied the vote in the Connecticut, New Jersey, New York, and Pennsylvania constitutions, but maintained it in Virginia and North Carolina; William Yates, *Rights of Colored Men to Suffrage Citizenship and Trial by Jury* (Merrihew and Gunn, 1838), iii, II.

5 Cultice, *Youth's Battle for the Ballot*, 12.

6 W.E.B. Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (Oxford University Press, 1935), 27.

7 Eric Foner, *Freedom's Lawmakers: A Directory of Black Officeholders During Reconstruction* (LSU Press, 1996).

simply by aging into it upon turning 21, and a new generation of African American men aged 21 and older had access to the franchise for the first time pursuant to ratification of the 15th Amendment.[8] During the period between 1840 and 1900, voter participation skyrocketed to 70 and 80 % of eligible voters nationally, reaching up to 90 % in some states[9]—rates which are hard to conceive today.

Even though they did not have the right of suffrage, young people "fueled American politics" as "[c]ampaigns became the centerpiece of the new American culture."[10] As detailed by historian Jon Grinspan in *The Virgin Vote*, "The age of popular politics coincided with the wild years of American youth." A new culture of campaigning emerged as a form of entertainment and socialization. Political party headquarters were set up in saloons where alcohol added to the din, and in barber shops, offering networking and potential job opportunities for the working class.[11] Due to the heightened attention to politics, enfranchisement upon turning 21 took on new significance—it marked a "sharp boundary between youth and adulthood," a rite of passage for manhood.[12] Young African Americans similarly "found identity and adulthood in popular politics," albeit in more discreet settings in "freedmen's schools and churches, at covert Union League meetings and bloody Reconstruction-era polling places."[13] (Figure 1)

Despite the hope of rebirth for the nation, the gains made by the First Reconstruction proved short-lived. Federal troops that had been sent south to implement the Reconstruction Amendments were withdrawn following the electoral crisis of the 1876 presidential election. Vigilante violence by racial terrorist groups such as the Ku Klux Klan and the political violence of Jim Crow laws took root.[14] Blacks were now left on their own without federal protection. Nonetheless, they "continued to vote in large numbers in most parts of the South for more than two decades after Reconstruction."[15]

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8 Jon Grinspan, *The Virgin Vote: How Young Americans Made Democracy Social, Politics Personal, and Voting Popular in the Nineteenth Century* (University of North Carolina Press, 2016).

9 Grinspan, *The Virgin Vote*, 5, 6, 7, and 131, citing John P. McIver, *Historical Statistics of the United States, Millennial Edition*, ed. Susan B. Carter and Scott Sigmund Gartner (Cambridge University Press, 2006); Paul Kleppner, *Who Voted? The Dynamics of Electoral Turnout, 1870 – 1980* (Praeger, 1982), 68 – 69.

10 Grinspan, *The Virgin Vote*, 5, 6.

11 Grinspan, *The Virgin Vote*, 6, 7.

12 Grinspan, *The Virgin Vote*, 8.

13 Grinspan, *The Virgin Vote*, 9.

14 See, for example, Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford University Press, 2006), 30.

15 C. Vann Woodward, *The Strange Career of Jim Crow*, commemorative ed. (Oxford University Press, 2002), 53 – 54.

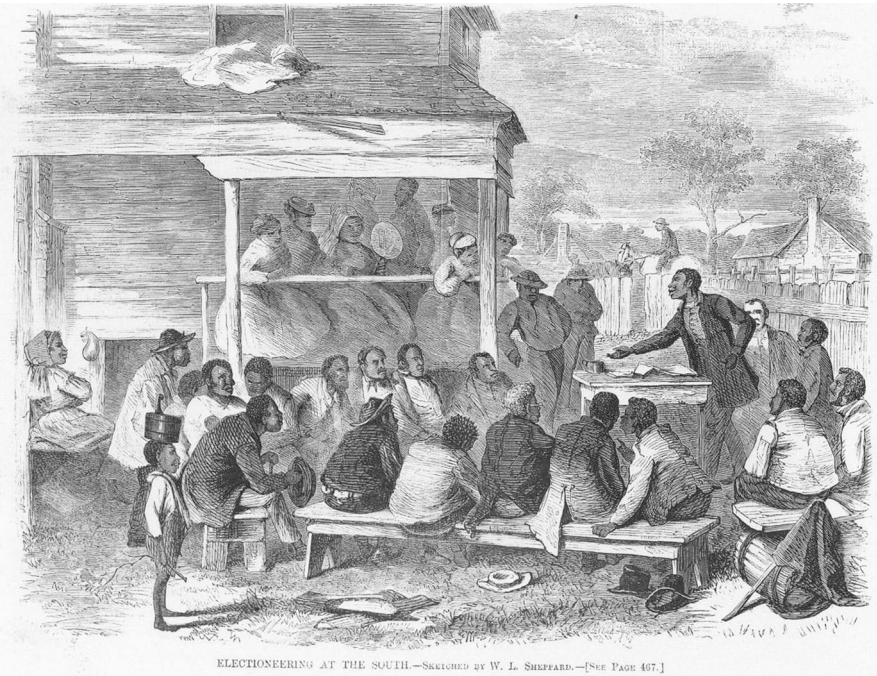

Figure 1: Newly enfranchised citizens engage in the discussion of political questions upon which they are to vote, aptly listening to a young African American orator.
Source: William Ludwell Sheppard, "Electioneering at the South." Print, *Harper's Weekly*, July 25, 1868, from The New York Public Library Digital Collections, Miriam and Ira D. Wallach Division of Art, Prints, and Photographs: Picture Collection, https://digitalcollections.nypl.org/items/510d47e1-3fa3-a3d9-e040-e00a18064a99.

During this period, the moral and political courage of youth was evident, even among those who had not yet gained the suffrage. In 1883, a recently turned 21-year-old, Ida B. Wells, who had been born into slavery, boarded a train in Memphis, Tennessee. She was dragged from her seat when she refused to relocate from the quiet 'ladies car' which was designated for white women and their Black servants, to the 'colored car' where smoking and drinking were allowed, and where white men joined at their pleasure. Wells retained an attorney to sue the railroad company for racial segregation. The trial court found in her favor, a major success at the time which gave her some local celebrity, but the verdict was later reversed by the Tennessee State Supreme Court.[16] The experience informed Ms. Wells'

16 Seventy years after Wells, segregation in public transportation was finally overturned by the

groundbreaking journalism exposing Jim Crow segregation and documenting lynching throughout the South.

Access to the vote was first restricted through fear and physical violence, and especially lynching. The resulting limited electorate, then, selected representatives who espoused views and advanced laws to revamp government in their likeness. Legal historian Michael J. Klarman summarized in *From Jim Crow to Civil Rights:*

> Though its timing and method varied, the general pattern of black disenfranchisement was consistent across states. First, whites reduced black political participation by force and fraud. … Then, Democratic legislatures enacted laws, such as complex voter registration requirements, which further reduced black voting and Republican representation. This facilitated state constitutional changes, such as poll taxes and literacy tests, which consummated black disenfranchisement.[17]

For example, between 1890 and 1918, all 11 former Confederate states enacted a poll tax, such as Mississippi, which adopted a $1 poll tax, among other limitations, into the state constitution in 1890. Five of the 11 enacted grandfather clauses, which allowed those on the voter registration laws prior to Black enfranchisement to remain on those lists and therefore avoid new impediments, such as Louisiana, where such a clause was adopted into the constitution in 1898. And seven enacted literacy tests, which disproportionately impacted Black voters due to the significant rates of illiteracy, such as South Carolina, where illiteracy among Black men was 55 %.[18]

The struggle for women's enfranchisement was also underway during this period. Eight states fully enfranchised women prior to the turn of the 20th century.[19] Several states gradually permitted women to vote prior to ratification of the 19th Amendment in 1920, sometimes only in school board races, particularly in the period between 1876 and 1898 when a burst of 25 states expanded such access. Women would no longer be confined to influencing the vote by appealing to their male enfranchised peers. Here, too, young people were engaged in the process of constitutionalism. For example, Alice Paul was 22 years old when she went to England and joined women's suffrage efforts there, returning home to lead suc-

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Supreme Court when five African American women in Montgomery, Alabama similarly refused to give up their bus seats. *Browder v. Gayle*, 352 U.S. 903 (1956).

17 Klarman, *From Jim Crow to Civil Rights*, 30.

18 U.S. Library of Congress, Congressional Research Service, *The Voting Rights Act of 1965: Background and Overview*, by Kevin J. Coleman, RL43626 (2015), 8 – 9.

19 Keyssar, *The Right to Vote*, Table A.17, A.20.

cessful congressional efforts for the 19th Amendment and to author the first Equal Rights Amendment of 1923.[20]

Just as Jim Crow disenfranchised Black men, Jane Crow suppressed Black women. Despite ratification of the 19th Amendment, it would take another century for the constitutional protections passed in the second part of the 1800s to finally take root during the Second Reconstruction through a combination of mass organizing and public pressure, coupled with a sympathetic judiciary and eventual leadership by the executive and legislative branches of federal government.

The Reconstruction Amendments ultimately transformed evolution of the right to vote for the rest of the nation. They motivated the ratification of future constitutional amendments such as the 19th Amendment for women's suffrage, the 24th Amendment to ban poll taxes, and the 26th Amendment for youth suffrage. They authorized Congress to enact new legislation to enforce these rights, such as the Voting Rights Act of 1965, discussed further below. The fundamental right to vote is recognized in the 14th Amendment's guarantee of equal protection under law, which also became the basis of future anti-discrimination rights beyond the racial context. The fundamental right to vote is also protected by the First Amendment's recognition of the freedom of association and speech, including election-related expression. Separately, the fundamental right to vote is expressly found within the state constitutions, which offer an independent, and sometimes broader, source of protection than federal rights.

2 The Second Reconstruction: A Second Emancipation

Although United States Supreme Court precedent overturned restrictions on the right to vote such as Jim Crow grandfather clauses in 1915,[21] the reality of implementation was more complicated. The culture of racial and economic power and control had to be extracted from the mores.

Some limited social gains were made in the South despite Jim Crow's stranglehold on the vote. As explained by preeminent southern historian C. Vann Woodward:

20 Bromberg, "The Youth Voting Rights Act."

21 See *Guinn v. United States*, 238 U.S. 347 (1915).

> Six states adopted laws, aimed at regulating the Ku Klux Klan, prohibiting the wearing of masks and burning of crosses. Forty-odd private universities and colleges admitted Negro students without legal compulsion. … Some professional associations, learned societies, lawyers, nurses, librarians and social workers [also abandoned the color line voluntarily]. Not all the reform was the consequence of outside pressure, and it would be unfair to the South and unfaithful to the facts to leave that impression. But the margin of activity for Southern liberals and moderates was never broad, and it was to narrow sharply with the rise of militant Southern resistance.[22]

Jim Crow political and physical violence dominated the law of the land until the nation's Second Reconstruction (1954–1968), a second period of constitutional renewal. The appointment of five new justices to the Supreme Court by President Eisenhower in just four years allowed for a fresh approach with the leadership of incoming Chief Justice Earl Warren.[23] The Warren Court (1953–1969) coincided with, and helped give way to, the Second Reconstruction, "enforcing norms of fair treatment and racial equality that, in their core meanings, are no longer substantially contested in American society."[24]

The unanimous, groundbreaking *Brown v. Board of Education* decision in 1954, published the first term of the new court, overturned a 60-year precedent from the turn of the century, holding segregation in public education to be violative of equal protection.[25] The ruling, and its reasoning, eventually gave way to the integration of public spaces, from elementary schools to professional schools, restaurants to beaches.[26]

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22 Woodward, *The Strange Career of Jim Crow*, 143.

23 William F. Swindler, "The Warren Court: Completion of a Constitutional Revolution," *Vanderbilt Law Review* 23 (1970): 213; Mark Tushnet, ed., *The Warren Court in Historical and Political Perspective* University Press of Virginia, 1993), 213. See also Mark Tushnet and Katya Lezin, "What Really Happened in Brown v. Board of Education," *Columbia Law Review* 91 (1991): 1867–1930.

24 Mark Tushnet, "The Warren Court as History: An Interpretation," *The Warren Court in Historical and Political Perspective*, ed. Mark Tushnet (University Press of Virginia, 1993), 2.

25 *Brown v. Board of Education*, 347 U.S. 483 (1954), overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896).

26 The landmark case was intensely developed and litigated by the NAACP, but little known at the time, and little appreciated even today, was that the central theory of the case was masterminded by a third-year Howard Law student in her early 30s. Pauli Murray, the only woman in her class, who went on to graduate valedictorian, proposed in her seminar paper that the NAACP overly focused on challenging the comparatively unequal conditions of segregation (e.g., a comparison of different quality of books used between classrooms), and that the separation itself should be challenged as unequal. See Kathryn Schulz, "The Many Lives of Pauli Murray," *The New Yorker*, April 10, 2017, https://www.newyorker.com/magazine/2017/04/17/the-many-lives-of-pauli-murray.

In the face of southern resistance, the Warren Court struggled between the idealism it set out in *Brown* and practical implementation. The Court had simply instructed, with no clear direction, that public school desegregation be implemented with "all deliberate speed." Fred Gray, a celebrated Alabama-based civil rights attorney who worked alongside the social justice movement, reflected: "Having made its ruling, the Court failed to carefully and completely spell out how this tremendous change in the social order was to be implemented and enforced by the legislature and executive branches of government. … [I]t gave the South years of room to evade the intent of the Court's decision."[27]

Nonetheless, Americans were finally greeted with moral clarity. Despite its shortcomings, according to Gray, the *Brown* decision "was welcomed by African Americans as if it were a second emancipation."[28] An awakening was taking place in these early days of what would later be recognized as the Second Reconstruction. The *Brown* decision unearthed an indelible well of hope from which sprang rich, multigenerational community organizing and a new era of constitutionalism. This post-*Brown* emergence of dynamic community organizing and civic engagement juxtaposed the post-*Brown* backlash of racial entrenchment, illustrated by the resurgence of the Klan and the introduction of new legal obstacles to voter engagement, such as stringent literacy tests, voter purges for technical registration flaws, and the continued imposition of poll taxes in five states (Alabama, Arkansas, Mississippi, Texas, and Virginia).[29]

2.1 The Gerrymandering of Tuskegee Institute

It was a time of rapid change in the fabric of public life and social systems. As the Montgomery, Alabama bus boycotts were winding down, Alabama State Senator Sam Engelhardt, Jr.—who was also the executive secretary of the state's White Citizens Council—proposed a 1957 state law ('Act 140') to redraw the municipal boundaries of the City of Tuskegee, the county seat of his legislative district.

What made the City of Tuskegee unique—and a target—was the presence of a concentrated, highly educated Black population associated with Tuskegee Institute, a nationally renowned HBCU founded by Dr. Booker T. Washington, and the Tuskegee Veterans Hospital, the first federal hospital staffed and operated by Black physicians, initially built to offer medical care to the more than

27 Fred D. Gray, *Bus Ride to Justice: Changing the System by the System* (New South Books, 1995), 186.

28 Gray, *Bus Ride to Justice*, 186.

29 See Klarman, *From Jim Crow to Civil Rights*, 392.

300,000 Black veterans returning from World War I to the racially segregated South. A journalist with *The New Yorker*, Bernard Taper, observed:

> Perhaps more than in any other comparable area, here are the extremes of [African American] life in the South and nation today. In this county, black hands daily perform the most intricate and delicate surgical operations known to medicine in the large veterans' hospital while other black hands till the earth under conditions characterized by the most primitive superstition and backwardness.[30]

The presence of this wealthier, educated class of Blacks also contributed to a polite, albeit tense, southern mannerism between the races, and specifically the "absence of menace" which was so common in other parts of the South.[31]

Before the passage of Act 140, about 40 % of the voters in the City of Tuskegee were Black, and Blacks comprised nearly one-third of the county's electorate.[32] Were Black residents able to register freely, their unified voting block could have overcome the political power of white domination.[33] Act 140 was a regressive response to an emerging trend of increased Black voter registration, and allowed only a handful of voter-eligible Black residents to remain within the city's limits. *Time Magazine* reported: "In the opinion of Alabama's Racist State Senator Sam Engelhardt Jr., if you can't lick 'em, the best thing to do is scatter 'em."[34] The proposal passed the state Senate and House unanimously and without any debate.

It was apparently not enough that the Macon County Board of Registrars had already imposed literacy and other exclusionary devices on Black voter registrants, including vaguely worded questionnaires and requirements to recite or write down long tracts of the Constitution. The chair of the elections board, Wheeler Dyson, twistingly justified voter suppression: "Well, they missed some

30 Bernard Taper, *Gomillion Versus Lightfoot: The Right to Vote in Apartheid Alabama* (University of Alabama Press, 2003), 41.

31 Taper, *Gomillion Versus Lightfoot*, 42.

32 Robert J. Norrell, *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* Alfred A. Knopf, Inc., 1985), 89.

33 Norell, *Reaping the Whirlwind*, 89. According to the U.S. Commission on Civil Rights, the 1950 Census reported a total county population of 30,561, of which Blacks were 25,784, and whites were 4,777. By 1958, the county voter registration list comprised 3,102 white voters and only 1,218 Black voters. United States Commission on Civil Rights, *Report of the United States Commission on Civil Rights*, 86th Cong., 1st sess., September 9, 1959, 75, https://www.crmvet.org/docs/ccr_rights_us_6100.pdf (pursuant to testimony by William P. Mitchell, see *infra* at note 52 and supporting text).

34 "Alabama: How to Deny a Vote," *Time Magazine*, December 30, 1957, https://time.com/archive/6612516/alabama-how-to-deny-a-vote/.

part of the questionnaire. If a fella makes a mistake on his questionnaire, I'm not gonna discriminate in his favor just because he's got a Ph.D."[35]

Journalist Bernard Taper joined accomplished Tuskegee Institute faculty outside of the registrar's office on a registration day, observing that they were forced to return multiple times to wait for their number to be called in order to take a lengthy test to affirm the right to register to vote. Tuskegee Institute's chaplain and professor of philosophy, Daniel W. Wynn, reflected to Taper as he sat outside the office on his fifth attempt to register: "[I]t shouldn't have to take me an hour and a half or two hours of reading and writing to prove that I can cope with the English language. It didn't take me that long to demonstrate my competence in French—and German as well, for that matter—when I took my Ph.D. exams in Boston University."[36]

Such was the environment from which the Tuskegee gerrymander emerged. Act 140 altered the municipality from a square shape containing nearly 5,500 Black residents (of whom 400 were registered to vote) and 1,310 white residents (of whom 600 were registered to vote) into a 28-sided 'sea dragon' which removed all but a small handful of qualified Black voters, and no white voters.[37]

Under the leadership of Dr. Charles G. Gomillion, sociology professor and dean of students at Tuskegee Institute and founder and president of the prodigious Tuskegee Civic Association (TCA), the African American community retaliated against the new law by boycotting white merchants in downtown Tuskegee. The boycott alarmed the local whites as much as the gerrymander alarmed the local African American community, as the local politics had seemed to be one of 'good manners' and no violence or harshness due in large part to the intertwinement of the local economy.[38]

The TCA retained Fred Gray for legal representation, who had just secured precedential relief from the United States Supreme Court on behalf of the nearby Montgomery Bus Boycotters, banning segregation in public transportation.[39]

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35 Taper, *Gomillion Versus Lightfoot*, 68.

36 Taper, *Gomillion Versus Lightfoot*, 62.

37 *Gomillion v. Lightfoot*, 167 F. Supp. 405 (M.D. Ala. 1958), reversed, 364 U.S. 339 (1960).

38 Taper, *Gomillion Versus Lightfoot*, 42–43.

39 A young attorney fresh out of law school, Gray's weekly lunches with Rosa Parks proved foundational, and launched his budding public interest law career. When she was arrested for refusing to give up her bus seat immediately after one of their lunches, Gray later reflected: "That day was, for me, the beginning point of all the monumental events that soon began to unfold in my life. My immediate little world began to change. And so did the larger world. I had pledged to myself that I would wage war on segregation"; Gray, *Bus Ride to Justice*, 33. See also The Martin Luther King, Jr. Research and Education Institute, Stanford University, "Montgomery Bus Boycott," https://kinginstitute.stanford.edu/montgomery-bus-boycott.

Despite his initial success overturning segregation in public transit, Gray had trouble recruiting local counsel to challenge Act 140, because the theory of the case seemed doomed from the start.[40] Although technically a right-to-vote case, the central issue was not blatant *denial* of the right to vote on account of race, like the grandfather clause and the white primaries that the Supreme Court had previously declared unconstitutional in 1915 and 1944 respectively. Here, Black registrants could still vote in county, state, and federal races. Yet, the central issue was that the law had redrawn the municipal boundaries to effectively move Black voters out of the city's limits. After all, how could they have a right to vote in a place they were technically no longer a part of?

Worse, just a decade earlier, the Supreme Court had refused to review a gerrymandering challenge in a case called *Colegrove v. Green.*[41] That case involved a challenge to redistricting in Illinois, where the state had simply not redistricted in 45 years, resulting in unequal populations among congressional districts. The Supreme Court famously shut the door on reviewing redistricting claims, explaining that "courts ought not enter the political thicket."[42] In other words, the judiciary should not get involved in the inherent politics of the redistricting process.

The federal district court dismissed the *Gomillion* Complaint, and the Fifth Circuit Court of Appeals affirmed the lower court's decision by a two-to-one vote. Gray was encouraged by the dissenting opinion of the appeals court, and read it as a roadmap for an argument to the Supreme Court.[43] Moreover, Gray *listened* to his clients, rather than dismissing or talking over them, reflecting: "While my colleagues were saying there was no denial of the right to vote, my clients back home in Tuskegee, who formerly lived in the city, were being denied the right to vote for municipal officers. There was definitely a Fifteenth Amendment question."[44] So, Gray was encouraged when the Fifth Circuit dissenting opinion acknowledged that "the Fifteenth Amendment contemplated a judicial enforcement of its guarantees against either crude or sophisticated action of states seeking to subvert this new right" and "there comes the time" when "legislation oversteps its

40 Gray, *Bus Ride to Justice*, 114.

41 *Colegrove v. Green*, 328 U.S. 549 (1946).

42 *Colegrove v. Green*, 328 U.S. 549, 556 (1946).

43 Gray, *Bus Ride to Justice*, 116.

44 Gray, *Bus Ride to Justice*, 117. It is a testament to Fred Gray's conviction that even with the recent bad precedent of *Colegrove*, he brought the legal challenge. Gray reflected in his autobiography, "In many respects, *Gomillion v. Lightfoot* is perhaps the most important civil rights case that I have had the privilege of handling. In fact, this case was my 'brainchild,' and the one that I thought from the beginning we would win in spite of overwhelming odds." *Bus Ride to Justice*, 119.

bounds. ... In such times the Courts are the only haven for those citizens in the minority."[45]

On appeal, Fred Gray appeared with his co-counsel Robert Carter, NAACP General Counsel, to the oral argument before the United States Supreme Court with an enlarged printed map of the gerrymander. Justice Frankfurter interrupted the very beginning of Gray's oral argument to focus on Tuskegee Institute and its centrality to the community. This seemed to set the stage for the eventual outcome of the case:

J. Frankfurter:	Where is the Tuskegee Institute on that map?
Fred D. Gray:	Tuskegee Institute is here, in the northwest corner. It is no longer in the city.
J. Frankfurter:	That's—that's now outside.
Fred D. Gray:	It is now outside. Yes, sir.
J. Frankfurter:	Well, where the—this is just geographic, historical interest, when was the Institute founded by?
Fred D. Gray:	The Institute was founded in ... I believe it was 1860, in 1860 something, I'm not sure.
J. Frankfurter:	As early as that?
Fred D. Gray:	Sir? Yes, sir.
J. Frankfurter:	Well, when did Dr. Washington get there? Do you have any idea? It's about the turn of the century, wasn't it?
Fred D. Gray:	Yes, sir.

The Supreme Court unanimously ruled with Dr. Gomillion and his co-plaintiffs, finding that, notwithstanding the critical role of state legislatures, "when a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment."[46] The Court distinguished *Gomillion* from prior cases like *Colegrove* involving "unequal weight in voting distribution" as falling more in the "political arena" and therefore improper for judicial review, because *Gomillion* presented a "differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote sole-

45 *Gomillion v. Lightfoot*, 270 F.2d 594 (5th Cir. 1959) (J. Brown, dissenting).
46 *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

ly from colored citizens." In other words, what made *Gomillion* different from other redistricting challenges was that it involved race.[47]

However, *Gomillion* was far more impactful than even this—it opened the door to future redistricting challenges, regardless of race. Only two years later, in *Baker v. Carr*,[48] the Supreme Court found that a redistricting challenge could not escape judicial review simply because of the inherent political nature of the redistricting process. The Warren Court held that where state legislative districts contained unequal populations, they violated the equal protection guarantee of the 14th Amendment. The principle 'one man, one vote' arose from this progeny, and went on to set a redistricting revolution of maps across the country.[49] The principle underscores that votes must have equal weight and political power. Where one district concentrates voters compared with another district, the elected representatives from each district represent a different number of voters—and therefore voters are afforded a different weight. The voting power of individual voters within a less populated district is aggrandized, and the voting power of voters within a more populated district is diluted.

The major precedent established by *Baker v. Carr* would not have been achieved but for the stepping stone set by *Gomillion*, and the historic, renowned Tuskegee Institute and its founder Dr. Booker T. Washington, as advanced to the courts by its longtime faculty member and administrator, the Tuskegee Civic Association, and other faculty members engaged in community affairs. The Supreme Court simply could not fathom that an institution of higher education so famous and so central to the municipality could be gerrymandered out of it, and it could not fathom that the judicial branch would not be able to review such blatantly unconstitutional race-based conduct.

Notice that the resulting principle of one man, one vote was premised on the 14th Amendment, and that *Baker v. Carr* and related emerging cases concerned population equality among districts, and not race. This is yet another example of how the Reconstruction Amendments laid the foundation for evolution of the right to vote and the democratic process at large, well beyond race. Put another

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47 It should also be noted that concurrent to *Gomillion*'s litigation, the U.S. Department of Justice filed a separate case, *United States v. Alabama*, on discriminatory suppression of Black voter registration in Macon County, home to Tuskegee Institute. Following a remand by the United States Supreme Court, the district court found the evidence "overwhelming" and "so abundantly clear" that "the State of Alabama, acting through its agents, including former members of the Board of Registrars of Macon County, has deliberately engaged in acts and practice designed to discriminate" in voter registration; *United States v. Alabama*, 192 F. Supp. 677 (M.D. Ala. 1961).
48 *Baker v. Carr*, 369 U.S. 186 (1962).
49 See *Reynolds v. Sims*, 377 U.S. 533 (1964).

way, these originally race-based constitutional protections ratified to eradicate the vestiges of slavery created a canon that would benefit a stronger democracy for all.

In addition to the often-overlooked role that *Gomillion* served in shaping voting rights jurisprudence, also underrecognized is the role that the Tuskegee Institute's college community played in the process. Although the institution itself was not formally involved in challenging the status quo, its academic faculty shaped the nation. These faculty members self-organized in the face of the county registrar's intransigence, and they self-organized in the face of a discriminatory state gerrymandering law that purposefully targeted them. They not only bore arm's-length witness to the discrimination of others within their community, but also endeavored to affirmatively exercise their own civil rights by repeatedly returning to the county registrar to get registered, by documenting the overall process, and then by telling the story on national television.

Indeed, Dr. Wynn, the aforementioned Tuskegee chaplain, and his faculty colleagues were among the first witnesses to testify before the newly formed U.S. Commission of Civil Rights, a creation of the Civil Rights Act of 1957.[50] The very first project of the Commission was to review election administration in Alabama following voting complaints from several Alabama counties. The Commission's 1959 report noted: "Significantly, the largest number of complaints from any single county, 44, came from Macon County, Ala., where many Negroes have achieved greater independence because of a considerably higher level of education and income"—that is, because of the presence of Tuskegee Institute and the Tuskegee Veterans Hospital.[51] The Commission report described that "the first official resistance to its attempt to carry out the task assigned to it by the Congress of the United States" was by the county Board of Registrars who, by order of State Attorney General John M. Patterson, reported to the Commission that the registrar's "records would not be made available to the Commission on Civil Rights."[52]

The Commission ultimately found the witnesses testifying as to the voter discrimination they suffered to be compelling, particularly in light of the dramatic intransigence of the local public officials. The Commission noted the qualifications of the witnesses:

> Among the 33 Negro witnesses who testified that they had not been allowed to register were 10 college graduates, 6 of whom held doctorate degrees. Only 7 of the 33 had not completed

50 United States Commission on Civil Rights, *Hearings Before the US Commission on Voting Rights*, 85th Cong., 1958–1959, https://www.usccr.gov/files/historical/1958/58-001.pdf.

51 *Report of the United States Commission on Civil Rights*, 56.

52 *Report of the United States Commission on Civil Rights*, 70.

> high school; all were literate. Most of them were property-owners and taxpayers. Some had voted in other States. Among them also were war veterans, including two who had been decorated, respectively, with four and five Bronze battle stars.[53]

The forthright recounting by these witnesses of their discrimination stood in stark contrast to the testimony offered by members of the county Board of Registrars. When Mr. Rogers, a four-year member of the board, was asked about whether white registrants were escorted into a different, larger room, he refused to answer upon the advice of State Attorney General Patterson, explaining "[b]ecause it might tend to incriminate me." Upon further lengthier consultation with the Attorney General, Mr. Rogers defiantly testified: "I am a judicial officer under the State laws of Alabama and my actions cannot be inquired into by this body."[54]

The Commission incorporated into its report data collection offered by its first witness, Mr. William Mitchell, a Tuskegee Veterans Hospital employee and Chairman of the TCA voter franchise committee who had studied with Dr. Gomillion and served as his chief deputy within the TCA.[55] Mitchell documented the rejection of Black voter registration forms in Macon County over eight years, and offered the Commission a seven-page written analysis with his testimony.[56] The Commission noted that Mitchell's statistical information "closely paralleled" that obtained by Commission staff.[57] The Mitchell analysis tracked the voter applications submitted by Black registrants each year from 1951 to 1958, with a total of 1,585 applications collected, of which only 510 were issued certificates of registration—that is, only 32 % of Black applications were accepted in Macon County in an eight-year period. The percentages of accepted Black registrants changed year to year, ranging from 14 % in 1951 to 46 % in 1955, depending on the functioning and leadership of the county Board of Registrars.

The Commission's findings and recommendations went on to inform new protections within the Civil Rights Act of 1960, and ultimately the Voting Rights Act of 1965 which is described further below. Among these recommendations were enhanced enforcement, including the appointment of federal registrars. This was a major provision, originally developed and drafted by a young Tuskegee Institute political scientist, Charles V. Hamilton, a newer member of the TCA, in response to

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53 *Report of the United States Commission on Civil Rights*, 80.

54 *Report of the United States Commission on Civil Rights*, 80.

55 *Report of the United States Commission on Civil Rights*, 76. See also Norrell, *Reaping the Whirlwind*, 61.

56 *Hearings Before the US Commission on Voting Rights*, 25 – 29.

57 *Report of the United States Commission on Civil Rights*, 75.

the county registrar's refusal to abide by the law, or even to function at all for an 18-month period, so as to avoid its duties.[58]

By 1960, as the federal registrar provision was incorporated into a new civil rights proposal before the U.S. Senate, former Alabama Attorney General Patterson, who campaigned on white fear to become governor, balked before the Senate committee: "We have not had anything in the South similar to 'federal registrars' as outlined in these bills since federal groups occupied the South during reconstruction days."[59]

This story of Tuskegee Institute in shaping voting rights legal jurisprudence and legislation offers some dose of inspiration of the long arc of justice. When Dr. Booker T. Washington established Tuskegee Institute in 1881—only 11 years after ratification of the 15th Amendment—he faced substantial criticism that his educational philosophy over-emphasized self-reliance and skills development rather than direct confrontation of the racial code. Nonetheless, generations later, the very academic community which he established would go on to foster economic self-improvement which white residents not only could not deny, but also relied on, and which set a foundation from which the academic community members could help themselves politically and, in the process, shape the nation.

2.2 The Student Civil Rights Movement

Throughout the South, separate though interconnected actions seemed to spark to signal the numbered days of Jim Crow. Frustrated by the continued delay in full implementation of *Brown* and its progeny, four North Carolina A&T University students engaged in direct action on February 1, 1960 to integrate a local Woolworths restaurant counter in Greensboro, North Carolina. The action was intentional; they had been meeting in their dorm rooms to discuss what could be done to manifest the promise of the 1954 *Brown* decision. They could not have predicted that this courageous action would set off an unprecedented student-led sit-in movement that rapidly spread across the country, in particular by HBCU students who were joined by northern allies.

In April 1960, a national student convergence brought together youth who participated in these decentralized, spontaneous sit-in actions. Organized with Ella Baker's guidance and support, the convergence launched the creation of the Student Nonviolent Coordinating Committee (SNCC). Here, Baker applied and shared

58 Norrell, *Reaping the Whirlwind*, 119.
59 Norrell, *Reaping the Whirlwind*, 120.

lessons learned from her prior experience as a field secretary with the NAACP in the Deep South, and in particular employed a model of inclusion and participatory democracy in decision-making. "It was the practice of a new type of inclusive, consensus-oriented democracy, which opened organizational doors to women, young people, and those outside of the cadre of educated elites."[60]

Youth leadership and sacrifice were prolific throughout the Second Reconstruction. For example, Freedom Summer of 1964 became a project that bridged civil rights leaders of the 1950s with the 1960s student movement, organized by the Council of Federated Organizations, which included representatives from the SNCC (the primary leader), Southern Christian leadership Conference, NAACP, and Congress of Racial Equality (CORE).[61] The goal was to move beyond the protest mobilizations of the bus boycotts, sit-ins, and freedom rides, to voter registration and freedom school projects across the South, and especially in the belly of the beast, Mississippi. The Mississippi Delta was an area of focus because of its abysmal voter registration rates among African Americans due to a combination of poverty, economic vulnerability, and intimidation by the white power structure.[62] It was a completely different terrain from wealthier, educated Tuskegee, Alabama.

Here, too, Ella Baker encouraged the young leaders to be effective organizers in their communities—they had to "form relationships, build trust, and engage in a democratic process of decision making together with community members. The goal was to politicize the community and empower ordinary people."[63] And, those youth organizers were fundamentally transformed in the process—"[i[t was a coming of age like no other … they forged new identities at the same time that they forced new political ideas and strategies."[64]

The SNCC specifically recruited northern white allies to Freedom Summer, in part to raise national awareness of the plight of Mississippi.[65] Six hundred and fifty student volunteers joined from 37 states and abroad, most from northern col-

60 Barbara Ransby, *Ella Baker and the Black Freedom Movement: A Radical Democratic Vision* (University of North Carolina Press, 2003), 310.

61 James P. Marshall, *Student Activism and Civil Rights in Mississippi: Protest Politics and the Struggle for Racial Justice, 1960–1956* (Louisiana State University Press, 2013), 36.

62 Marshall, *Student Activism and Civil Rights in Mississippi*, 41–42.

63 Ransby, *Ella Baker*, 270.

64 Ransby, *Ella Baker*, 295.

65 Ransby, *Ella Baker*, 320–322; Marshall, *Student Activism and Civil Rights in Mississippi*, 85–86, 93–94.

lege communities. Half were Jewish American,[66] including Andrew Goodman (age 20) and Michael Schwerner (age 24). Goodman had just arrived in Neshoba County from a national student training, and joined Schwerner, who had been organizing the local CORE office, when they were murdered alongside local Black activist James Chaney (age 21) by the Klan with the support of the local police department and the county sheriff's office. Their disappearance captivated national attention for weeks as the FBI undertook an extensive 44-day search to discover their bodies.

The next summer, political violence would again be broadcast on living room televisions across the country as hundreds of non-violent protesters were brutally beaten by police in a march from Selma to Montgomery. The Selma march protested the killing of African American voting rights activist Jimmy Lee Jackson (age 26), and highlighted the systemic barriers preventing voter registration in the South. The actions across the Edmund Pettus Bridge, the site of the brutal Bloody Sunday beatings of civil rights marchers, marked a turning point in the call for voting rights, and significantly contributed to finally passing the long-lingering Voting Rights Act of 1965.

2.3 The Voting Rights Act of 1965

As reported by the United States Commission on Civil Rights in 1964, Black voter registration drastically dropped following the First Reconstruction, and even then was halved by 1955 due to the proliferation of Jim Crow laws.[67] (Table 1). Then, while Black voter registration among southern states mostly increased between 1956 and 1964 (with the exception of Louisiana) in the midst of the Second Reconstruction, it remained quite low overall—lowest in Mississippi (6.7%), Alabama (23%), Louisiana (32%), South Carolina (39%), and Georgia (44%).[68] (Figure 2)

66 Marshall, *Student Activism and Civil Rights in Mississippi*, 93. See also Assistant Attorney General Kristen Clarke, "Justice Department Recognized Jewish American Heritage Month," *U.S. Office of Public Affairs*, May 24, 2023, blog on file with author.

67 United States Commission on Civil Rights, *Report on Voting in Mississippi*, 89th Cong., 1st sess., May 18, 1965, 8.

68 *Report on Voting in Mississippi*, 11.

Table 1: Voter Registration and Race in Mississippi, 1867–1955.
Source: United States Commission on Civil Rights, *Report on Voting in Mississippi*, 89th Cong., 1st sess., May 18, 1965, 8.

Year	Negro voting age population	Negro registration	Percent of Negro voting age population registered	White voting age population	White registration	Percent of white voting age population registered
1867	98,926	60,167	66.9	84,784	46,636	55.0
1892	150,409	8,615	5.7	120,611	68,127	56.5
1896	198,647	16,234	8.2	150,530	108,998	72.4
1899	198,647	18,170	9.1	150,530	122,724	81.5
1955	495,138	21,502	4.3	710,639	423,456	59.6

Voter impediments such as literacy tests and poll taxes persisted during this period as methods of exclusion. The latter would eventually become illegal, first via ratification of the 24th Amendment in 1962 with regard to federal elections, and then via a Supreme Court case in 1964 premised on the 14th Amendment, which applied to all elections.[69]

By 1968, three years after the passage of the Voting Rights Act, Black voter registration had climbed to more than 50 % of the non-white voting-age population in every state in the South, with the biggest gain in Mississippi, where non-white registration had risen from 6.7 to 59.8 %.[70] Important gains had also been made in Alabama (from 19.3 to 51.6 %), Georgia (from 27.4 to 52.6 %), Louisiana (31.6 to 58.9 %), and South Carolina (37.3 to 51.2 %).

The main features of the Voting Rights Act of 1965, which has since been amended five times, were key to facilitating increased voter registration and preventing rollbacks:

1. Prohibiting voter qualifications, standards, practices, or procedures to deny or abridge the right to vote on account of race or color.[71]
2. Establishing a coverage formula for states and political subdivisions which used a test or device (like literacy tests, for example) as a condition of voter registration on November 1, 1964, and either less than 50 % of people of voting age were registered on that date, or less than 50 % of people of voting age voted in that November 1964 election.[72] (This section was subsequent-

69 *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).
70 United States Commission on Civil Rights, *Report on Political Participation*, 90th Cong., 2nd sess., May 1968, 12–13.
71 *Voting Rights Act of 1965*, Public Law 89–110, amended through Public Law 110–258, Sec. 2.
72 *Voting Rights Act of 1965*, Sec. 4(b).

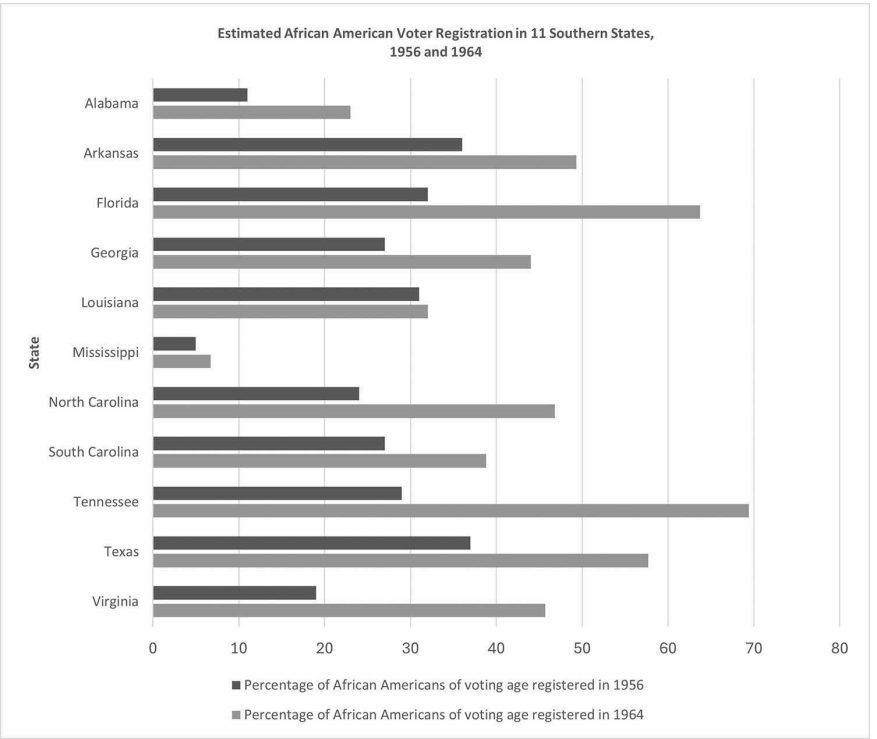

Figure 2: African American Voter Registration in 11 Southern States Prior to Passage of the Voting Rights Act
Source: United States Commission on Civil Rights, Report on Voting in Mississippi, 89th Cong., 1st sess., May 18, 1965, 11.

ly amended over time, and eventually invalidated in 2013 by the United States Supreme Court in *Shelby v. Holder.*)

3. Requiring approval of new voting laws in covered jurisdictions by the Department of Justice or a federal court (also referred to as 'pre-cleared') before going into effect.[73]
4. Authorizing the appointment of federal voting examiners to determine voter qualification and requiring enrollment by state and local officials.[74] (This proved to be a key enforcement mechanism, especially in the immediate years after passage of the Voting Rights Act.)

73 *Voting Rights Act of 1965*, Sec. 5.
74 *Voting Rights Act of 1965*, Sec. 7.

5. Suspending the use of literacy tests in covered jurisdictions.[75]
6. Prohibiting any person, acting under color of law or otherwise, from intimidating, threatening, or coercing any person for attempting to vote or voting.[76]

All told, youth, students, and college communities were a central force in the Second Reconstruction's call for equal protection and the right to vote. The multigenerational, diverse partnerships that emerged during the movement finally secured constitutional rights that had been ratified a century earlier during the First Reconstruction. It required mass mobilization and longer-term strategic organizing, persistence, mass media, and strategic litigation, to bend the arc of justice.

Various factors could have steered the effort off course. Had the composition of the United States Supreme Court been different, organizers and their lawyers may not have had a sympathetic ear, and landmark litigation which tapped into the public's hope likely would not have been established—or at least would have taken more time to establish. We will never know whether reason would have ultimately prevailed in the absence of violence and regular people sacrificing themselves in the process, including subjecting themselves to the risk of arrest, and even death. Had young people not committed themselves to non-violence, it is unlikely that the larger goals of the movement would have succeeded.

What is clear, however, is that a second period of constitutional renewal was finally achieved, although the work was by no means complete. For example, several initiatives introduced during this period of renewal remain outstanding today, such as eradication of the electoral college and the securement of statehood for the District of Columbia, two constitutional proposals that were advanced by U.S. Senator Birch Bayh via his critical post spearheading the U.S. Senate Judiciary Subcommittee on Constitutional Amendments.[77] By 1968, it was young people's turn for the suffrage, and they would find a home, and success, in Bayh's subcommittee.

75 *Voting Rights Act of 1965*, Sec. 4.
76 *Voting Rights Act of 1965*, Sec. 11.
77 See Robert Blaemire, *Birch Bayh: Making a Difference* (Indiana University Press, 2019).

Figure 3: U.S. Senator Jennings Randolph (D-WV) and his assistant Phil McGance meet with Paul Myer and Tom Hipple of the Youth Franchise Coalition during the group's early days. "*Having Randolph as a sponsor of the Twenty-Sixth Amendment lent an important historical link to our renewed effort to gain adoption. In the early days he was extremely helpful in opening other Senate doors to us.*" – Paul Myer, chairman and co-founder of the Youth Franchise Coalition.[78] Photograph from approximately 1967–1968. Produced with permission by the Youth Franchise Coalition. Image courtesy of University of Indiana Archives: Modern Political Papers: 26th Amendment Collection.

3 The 26th Amendment: Youth Political Enfranchisement, an Integral Part and Natural Extension of the Second Reconstruction

A proposal to lower the voting age to 18 and outlaw age discrimination in ballot access had been introduced to Congress over 150 times during a 30-year period since 1942 in light of young people's involvement in World War II. However, bolstered by the national energy for social change in the Second Reconstruction, the late 1960s marked a tipping point for youth suffrage as the war in Vietnam festered.

78 Author interview with Paul Myer (July 2025).

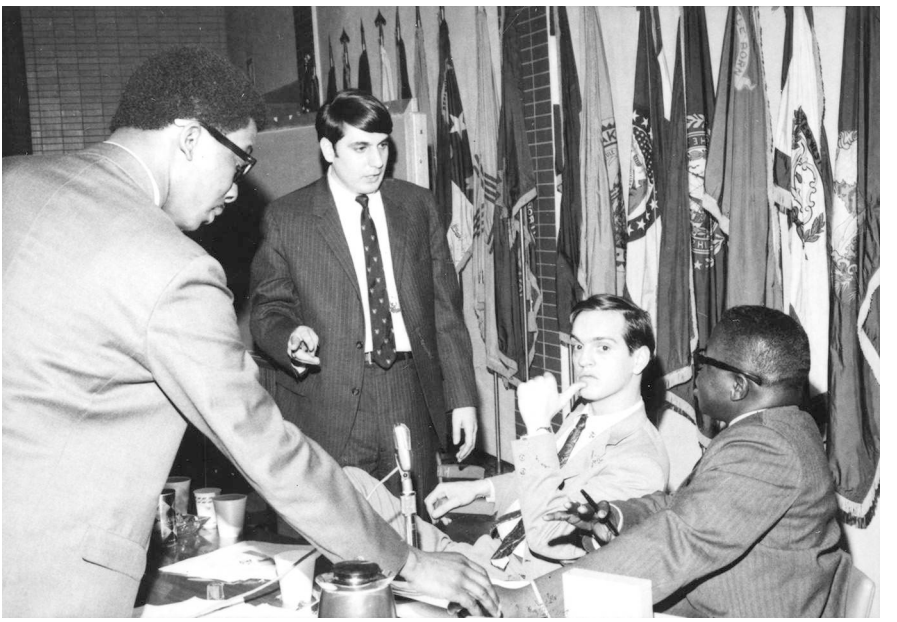

Figure 4: Paul Myer and Tom Hipple of the Youth Franchise Coalition (YFC) attend a meeting hosted at the National Education Association headquarters and meet with representatives of the NAACP Youth & College Division. *"I and others worked very hard to gain the support of Black and Latino organizations as well as both Democratic and Republican youth organizations. While there was some initial concern about the YFC's efforts to include the 18-year-old vote as an amendment to the pending Voting Rights Act extension, ultimately the Leadership Conference on Civil Rights endorsed and worked for Congressional adoption and Presidential approval. I deeply appreciated the personal friendship and mentoring by Clarence Mitchell, NAACP lobbyist. His support was critical to achieving the YFC's goals."* – Paul Myer, chairman and co-founder of the Youth Franchise Coalition.[79] National Education Association, Joe Di Dio. Image courtesy of University of Indiana Archives: Modern Political Papers: 26th Amendment Collection, 1946 – 2021, Box 8.

At the end of 1968, a youth movement called "Let Us Vote" (LUV) started at the University of the Pacific in California, and spread across the country—reaching 3,000 high schools and over 300 college campuses in all 50 states in just six weeks.[80] By February 1969, a wider youth-led coalition had formed which would lead the charge: the Youth Franchise Coalition, engaging prominent civil

79 Author interview with Paul Myer (July 2025).
80 Cultice, *Youth's Battle for the Ballot*, 97– 98.

rights, education, labor, and youth organizations in the first coordinated national campaign for the youth franchise.[81]

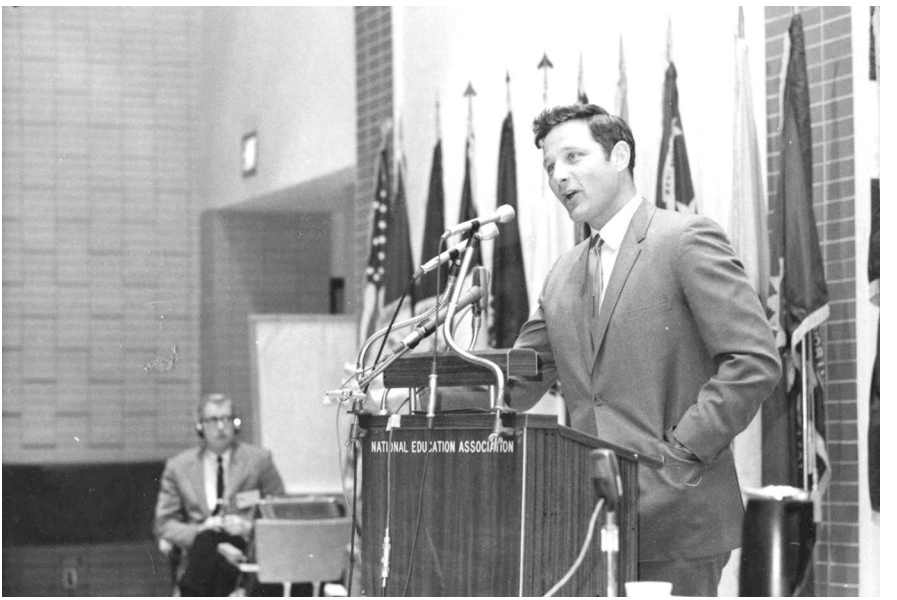

Figure 5: U.S. Senator Birch Bayh (D-Indiana) addresses the National Education Association on the status of the Twenty-Sixth Amendment. Bayh drove its ratification, along with that of several other proposed constitutional amendments, from his critical role as Chair of the U.S. Senate Judiciary Subcommittee on the Constitutional Amendments. *"It was the golden years of a remarkable U.S. Senate career that spanned three terms. He was a practical, liberal Democrat in a conservative Republican state, yet the force of his personality and his love of retail campaigning led to statewide victories in 1962, 1968, and 1974."* – Jason (Jay) Berman, long-time chief of staff to Senator Bayh. Berman was vital in organizing the congressional hearings to lower the voting age, supporting behind-the-scenes strategic coordination in Congress, and wrangling votes, first for the critical statutory approach to lowering the voting age pursuant to the Voting Rights Amendment Act of 1970, and then via constitutional ratification.[82] National Education Association, Joe Di Dio. Image courtesy of University of Indiana Archives: Modern Political Papers: 26th Amendment Collection, 1946 – 2021, Box 8.

81 The then-youth organizers leading the ratification inside and outside the Halls of Congress recently produced a one-hour documentary: Al Vanderklipp, "The 26th Amendment: The Long Road to the Fastest Ratification," Close Up Washington, 2024, 58:19, https://www.closeup.org/the-26th-amendment-and-the-history-of-the-youth-vote/. The documentary offers first-hand accounts by the Amendment's founders.

82 Author interview with Jason Berman (July 2025).

Ian MacGowan, executive director of the Youth Franchise Coalition, testified before Congress a year later in February 1970 on the vast activity of the coalition and its membership organizations such as the National Education Association; the Episcopal Church; the NAACP; the National Association of Social Workers; the Ripon Society, a Republican-oriented youth organization actively mobilizing its members in the states; the Southern Christian Leadership Conference; the U.S. National Student Association; the Young Democrat Clubs of America; and the YMCA and YWCA. MacGowan then recalled the vox publica sentiment of the nation's founding:

> The American democracy has survived for nearly two centuries. A major reason for its durability has been that, increasingly, the American form of government has been able to broaden the franchise so as to continue to be truly representative. It has become increasingly evident that to remain viable, the franchise must again be expanded so that the Government will be reflective and representative of the views of its younger citizens—those citizens aged 18 to 21. …
>
> While America's young people have no voice in their Government, they must, nevertheless, bear the burdens of citizenship in the form of paying taxes, fighting wars, assuming family responsibilities, contributing as adults to the work force, and bearing the civil and criminal consequences of their own actions. Our Government cannot be democratically representative while there remains a group of citizens who must bear the consequences of democratic decisionmaking but have no voice in that process. …
>
> Presently, there is widespread frustration among our Nation's youth—students and workers alike—because they do not have the opportunity for realistic and responsible expression through the use of the ballot. Granting them the right to vote would open to them the most effective, most desirable, and most legitimate channel of political participation and expression. …
>
> No one can deny the fact that some young people have lost patience with the unresponsiveness of society. This small but significant minority has chosen more violent and radical solutions to the problems that beset us. If the disenchantment of youth increases because of a continuing unresponsiveness on our part, our society can reasonably expect more outbursts of violence. … In Kentucky, where 18-year-olds have the vote, 80 percent of college youths of that age group voted in the last presidential election, illustrating a concern far above any other voting group. … The political consciousness of youth needs to be channeled into meaningful involvement within the political process. The most obvious means to involve these young people is through the ballot.[83]

83 United States Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary, *Hearings on S.J. Res. 7, S.J. Res 19, and Others Relating to Proposed Constitutional Amendments Lowering the Voting Age to 18.* 91st Cong., 2nd sess., February 16–17, 1970 and March 9–10, 1970, 43–48.

Philomena Queen, a youth organizer with the NAACP, also offered the subcommittee testimony in March 1970, following the remarks of NAACP Youth Director James Brown, Jr. The previous year, the NAACP's Youth and College Division had hosted a national youth mobilization in Washington, D.C., singularly focused on lowering the voting age. It was the first coordinated outreach and lobby campaign on the issue organized on the Hill.[84] Queen testified:

> I recognize and respect the honest opinions of those who feel that age 21 should remain as the magic number to give young citizens the opportunity to effectively participate in the politics of American life and, in effect, help determine our own destiny. ...
>
> We see in our society wrongs which we want to make right; we see imperfections that we want to make perfect; we dream of things that should be done but are not; we dream of things that have never been done, and we wonder why not. And most of all, we view all of these as conditions that we want to change, but cannot. You have disarmed us of the most constructive and potent weapon of a democratic system—the vote.[85]

The path to ratification would prove to be winding. The Senate Subcommittee on Constitutional Amendments, led by Senator Birch Bayh of Indiana, held extensive hearings on youth enfranchisement in 1968[86] and 1970.[87] In 1968, approximately 50 witnesses spoke from various levels of government, including Senators, Congressmen, Governors, and the Vice President of the United States, nearly all in favor of the proposal.[88] Most of the discussion in 1968 was focused on youth enfranchisement by constitutional amendment. However, an alternative proposal was introduced in the 1970 hearings: lowering the voting age could be accomplished via legislation. Although a memorandum was originally circulated by Senator Ted Kennedy advancing this statutory approach, ultimately a different messenger was necessary to secure bipartisan support for the new strategy. Thus, the well-

84 Cultice, *Youth's Battle for the Ballot*, 103.

85 Philomena Queen, Youth Regional Chairman, Middle Atlantic Region, National Association for the Advancement of Colored People, United States Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary, *Hearings on S.J. Res. 7, S.J. Res 19, and Others Relating to Proposed Constitutional Amendments Lowering the Voting Age to 18*. 91st Cong., 2nd sess., February 16–17, 1970 and March 9–10, 1970, 150–155.

86 United States Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary, *Hearings on S.J. Res. 8, S.J. Res 14, and S.J. Res. 78 Relating to Lowering the Voting Age to 18*, 90th Cong., 2nd sess., May 14–16, 1968, 79.

87 United States Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary, *Hearings on S.J. Res. 7, S.J. Res 19, and Others Relating to Proposed Constitutional Amendments Lowering the Voting Age to 18*, 91st Cong., 2nd sess., February 16–17, 1970 and March 9–10, 1970, 129–130.

88 Lewis J. Paper, "Legislative History of Title III of the Voting Rights Act of 1970," *Harvard Journal on Legislation* 8 (1970): 123–157.

respected, seasoned Senate Majority Leader Mike Mansfield of Montana first introduced the proposal as a legislative amendment to the Voting Rights Act of 1965. The resulting Voting Rights Act Amendments of 1970 marked the first bipartisan federal statute to enfranchise youth.[89] The new law did not simply lower the voting age, but declared the 21-year age requirement a denial and abridgement of "the inherent constitutional rights of citizens" 18 years and older, and violative of "the due process and equal protection of the laws that are guaranteed to them under the Fourteenth Amendment."[90]

This statutory approach to lower the voting age became the subject of a challenge to the United States Supreme Court in *Oregon v. Mitchell*, which held, in an extremely divided plurality decision involving four separate dissenting opinions, that Congress could extend the youth vote via statute for federal races, but could not impede on states to determine the manner of state and local races.[91] The justices ultimately wrestled with the bounds of the 14th Amendment; the power of states to determine the time, place, and manner of elections; and Congress's supervisory powers. The justices were evenly divided as to Congress's power to alter the age-based voting requirements: four justices believed Congress did not have the power at all, neither for federal nor for state/local elections; four others believed Congress did have the power for all elections. Justice Black penned the decision and found a compromise: Congress could act for federal races, but not state and local races.

With the 1972 presidential election looming, pressure began to build due to the practical potential bureaucratic nightmare of having to administer different elections to different voting cohorts: federal ballots for those 18 and older, and state/local ballots for those 21 and older. In addition to the complications of how to practically administer such a dual electoral system, concerns also began to mount about the expense, with estimates of national cost ranging from 10 to 20 million dollars, and possibly more.[92] Congress would have to resolve the crisis, and the only path forward was a constitutional amendment—a significantly higher bar to reach. Rather than require a majority of votes in both houses, as needed for a statute to pass, a constitutional amendment needed at least two-thirds of

89 Bromberg, "Youth Voting Rights and the Unfulfilled Promise," 1126.

90 Bromberg, "Youth Voting Rights and the Unfulfilled Promise," setting out the legislative language of Title III of the Voting Rights Act, Public Law 91–285, §§ 301–305.

91 *Oregon v. Mitchell*, 400 U.S. 112 (1970). See Bromberg, "Youth Voting Rights and the Unfulfilled Promise," 1128–1131, describing the various findings and opinions in the case.

92 Senate Report accompanying proposal sent to the states for ratification of the Twenty-Sixth Amendment, S. Rep. No. 92–26, at 15 (1971) accompanying S.J. Res. 7, 92d Cong. (1971).

Congress, who would then send the proposal to the states, of which at least three-fourths would have to approve.

The Amendment had been introduced to Congress over 150 times since its initial proposal during World War II, but it was not until the late 1960s and early 1970s, when young people were at the helm, that it gained any real traction. While its path was circuitous, the political acumen necessary to navigate its ultimate success is undeniable, as the proposal took the shape of constitutional amendment, then statutory amendment, then intensive Supreme Court litigation generating a fairly peculiar split outcome, then potential electoral crisis, and finally ratification.

The language of the 26th Amendment ultimately ratified is identical to its original proposal in 1942:

> The right of citizens in the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
>
> The Congress shall have power to enforce this article by appropriate legislation.

While political expedience is an important part of the story, the reasons animating its ratification throughout its 30 years of introduction to Congress, and especially in the various hearings held and testimonies collected between 1968 and 1971, focused on the basic sense of fairness given young adults' increased responsibilities and capabilities:

1. The value of the idealism and moral courage that youth provide in reenergizing the practice of democracy. For example, in a ceremonial certification of the Amendment, President Nixon reflected that young people offer democracy "some idealism, some courage, some stamina, some high moral purpose that this Nation always needs, because a country, throughout history, we find, goes through ebbs and flows of idealism."[93]
2. The increased political competence of youth compared with prior generations, due to greater access to information such as, at the time, television, and due to the standardization of education during the 20th century.
3. The increased responsibilities that youth take on compared with prior generations of youth, as they fought in war, assume debt, and live independently.
4. Stemming protest and unrest by offering an on-ramp to constructively and systemically participate in the process to advance change.

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93 Richard Nixon, "Remarks at the Ceremony Marking the Certification of the 26th Amendment to the Constitution," The American Presidency Project, U.C. Santa Barbara, July 5, 1971, https://www.presidency.ucsb.edu/node/240368.

A fifth critical theme emerged as well, connecting this increased role of youth in society with a recognition of the historical expansion of suffrage over time. Senator Birch Bayh offered the opening remarks on the Amendment's proposal on the first day of congressional hearings, May 14, 1968:

> I thought that at the beginning of the hearings it might be interesting to state that there probably have been few previous times in our history when Congress has turned more frequently and more comprehensively toward efforts to amend the Constitution of the United States. Since assuming the chairmanship of this subcommittee in 1964, I personally have presided over six major efforts to amend our basic law. ... Today, we begin the sixth effort to extend the franchise to American citizens 18 years of age or over. ...
>
> The generation of young Americans in the 1960's, this generation, is no longer docile, passive, and uninvolved. They are deeply involved in the issues of our time, the issues of war and peace, freedom and equality for all Americans, and uncompromising fulfillment of the promise of our Nation. Like any involved and active group in the United States, young people of today have among their number a few extremists, whether they be the flower children dropouts or the ultramilitant anarchists. It is unfortunate that these few attract the bulk of headlines and national attention when, in fact, the vast majority of young people today are working incessantly, if less obtrusively, toward making our Nation an even better place in which to live. They are working actively for political candidates of both parties. They are working for civil rights and equal opportunity movements; they are working for peace, whether as members of the Armed Forces of the United States or as civilian commentators in debating the merits of American foreign policy. They are students, husbands, wives, workers —anyone who has observed the young people in the Peace Corps and VISTA must be convinced of this. ...
>
> The religious and property requirements for voting were removed in colonial America. Racial barriers to voting have been coming down for a century. Women were given the right to vote in 1920. It seems to me to be in keeping with the tradition of expansion of the franchise, as well as the recognition of the greater role played by American youth in our lives today, that we should now allow the Constitution to reflect what has already become a fact of life in our land : that our young people today are well bred, well educated, and extremely well aware of the positions and needs of our Nation, and that they should now be permitted to participate in the building of our Nation through the most valued American right, the right to vote.[94]

The legislative history of the 26th Amendment includes clear guidance that it was inspired by, and was meant to further, the protections afforded by the 14th Amendment and the Voting Rights Act of 1965, at least with regard to youth voters.

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94 Senator Birch Bayh, Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments, United States Senate Subcommittee on Constitutional Amendments of the Committee on the Judiciary. *Hearings on S.J. Res. 8, S.J. Res 14, and S.J. Res. 78 Relating to Lowering the Voting Age to 18*, 90th Cong., 2nd sess., May 14–16, 1968, 2–4.

The Senate report that accompanied the proposal to the states for ratification includes a key provision of the goal of the Amendment:

> [F]orcing young voters to undertake *special burdens*—obtaining absentee ballots, or traveling to one centralized location in each city, for example—in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise.[95]

This language–"*special burdens*"–is key to understanding what the 26th Amendment is meant to protect, and the Senate report offers us specific, non-exhaustive examples to understand its purpose and scope: "obtaining absentee ballots"—that is, elections that are run when students are not on campus, such as during the spring or summer breaks—and "traveling to one centralized location in each city" to vote—that is, traveling far from campus to access a polling site.

What makes this constitutional history particularly interesting is both 1) the speed of the process—the quickest in U.S. history, taking less than 100 days to be approved by the requisite 38 states—in large part due to the wide, cross-partisan appeal for the youth franchise; and 2) that it was primarily led by young people who worked inside and outside of the Halls of Congress.[96] Their persistence led to the expansion of the franchise to 11 million new voters in 1971—the largest single expansion of the franchise since ratification of the 19th Amendment.

95 S. Rep. No. 92–26, at 14 (1971) (emphasis added).

96 Curious readers can learn more by reviewing the relatively few books and articles published on the topic. For a full history on the ratification process for the 26th Amendment, see Jennifer Frost, *"Let Us Vote!": Youth Voting Rights and the 26th Amendment* (New York University Press, 2022). See Cultice, *Youth's Battle for the Ballot*, the seminal book on the topic. See Bromberg, "Youth Voting Rights and the Unfulfilled Promise," for a legal-oriented analysis. See also the first legal volume dedicated to the 26th Amendment since its ratification, published by *The Rutgers University Law Review* 75, no. 5 (Summer 2022), featuring a variety of perspectives on the Amendment, including by U.S. Election Assistance Commissioner Ben Hovland; college faculty and students engaged in a quantitative and qualitative analysis of the treatment of provisional ballots cast by their peers; developmental scientists; a youth criminal justice legal clinician; and more.

Figure 6: Demonstration for reduction in voting age, Seattle, 1969. Seattle Post-Intelligencer Collection, Museum of History & Industry, Seattle; All Rights Reserved.

4 Jim Crow Goes to College: First-Generation Challenges to the Youth Vote

As soon as the 26th Amendment was ratified in 1971, local county registrars across the nation sought to restrict the youth vote by introducing new tests for this newly enfranchised class to prove eligibility. These tests focused on the ability to establish sufficient ties to their new communities, and were primarily applied to students living on college campuses. A central problem with these residency tests was their selective distribution to young voters, which was found to be an unconstitutional abuse of discretion by election administrators under the equal protection clause of the 14th Amendment and the 26th Amendment. Another theme was that the residency tests violated other recognized constitutional rights protected by the 14th Amendment, such as the fundamental right to vote and the right to travel. Certain judicial opinions also acknowledged the impingement on the right of political expression protected by the First Amendment.

While the precise contents of the residency tests were different from the Jim Crow voter suppression devices employed until a few years earlier when they were finally invalidated by the Voting Rights Act of 1965, the pattern was the

same: a grant of systemic enfranchisement was followed by the introduction of new exclusionary methods.

It only took about two years after ratification of the 26th Amendment for a flush of federal courts and state supreme courts across the nation to begin to strike down applications of these residency tests, including in, chronologically, Michigan, California, Texas, Kentucky, Vermont, New Hampshire, New Jersey, and Pennsylvania, followed by Mississippi in 1974 and 1976, and New York in 1984.[97] These tests generally inquired about the students' ties to the local campus community, whether they owned a home there, whether they were married including to local residents, and whether they had a local job arranged for after graduation. In other words, the presumption of these questionnaires was that students are temporary and not bona fide residents, and so should not vote from their new addresses.

The California Supreme Court offered context for the "new birth of freedom" of youth suffrage:

> America's youth entreated, pleaded for, demanded a voice in the governance of this nation. On campuses by the hundreds, at Lincoln's Monument by the hundreds of thousands, they voiced their frustration at their electoral incompetence and their love of a country which they believed to be abandoning its ideals. Many more worked quietly and effectively within a system that gave them scant recognition. And in the land of Vietnam they lie as proof that death accords youth no protected status. Their struggle for recognition divided a nation against itself. Congress and more than three-fourths of the states have now determined in their wisdom that youth "shall have a new birth of freedom"—the franchise. Rights won at the cost of so much individual and societal suffering may not and shall not be curtailed on the basis of hoary fictions that these men and women are children tied to residential apron strings. Respondents' refusal to treat petitioners as adults for voting purposes violated the letter and spirit of the 26th Amendment.[98]

The New Jersey Supreme Court in *Worden* also offered a fulsome analysis when undergraduate and graduate students of Trenton State College (now The College of New Jersey) and Princeton University filed a lawsuit in state court.[99] The lead

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97 *Wilkins v. Bentley*, 180 N.W. 3 d423 (Mich. 1971); *Jolicoeur v. Mihaley*, 488 P.2d 1 (Cal. 1971); *Ownby v. Dies*, 337 F. Supp. 38 (E.D. Tex. 1971); *Bright v. Baesler*, 366 F. Supp. 527 (E.D. Ky. 1971); *Shivelhood v. Davis*, 336 F. Supp. 1111 (D. Vt. 1971); *Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972); *Worden v. Mercer County Bd. of Elections*, 294 A.3d 233 (N.J. 1972); *Sloane v. Smith*, 351 F. Supp. 1299 (M.D. Pa. 1972); *Frazier v. Callicutt*, 383 F. Supp. 15 (N.D. Miss. 1974); *Latham v. Chandler*, 406 F. Supp. 754 (N.D. Miss. 1976); *Symm v. United States*, 439 U.S. 1105 (1979), *aff'g United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978); *Auerbach v. Kinley*, 594 F. Supp. 1503 (N.D.N.Y. 1984).

98 *Jolicoeur v. Mihaley*, 488 P.2d 1 (Cal. 1971), 7.

99 *Worden v. Mercer County Bd. of Elections*, 294 A.3d 233 (N.J. 1972).

plaintiff, Thomas Worden, was a first-year student who testified that he hoped to obtain a "job teaching someplace" which "could be anywhere," and that he was told he could not register to vote because he was a student living on campus. *Worden* examined prior legal precedent where the right to vote could not be trampled based on a presumption of lack of sufficient connection to the community to cast a knowledgeable vote.[100]

Worden next engaged in a full legislative history of the 26th Amendment, as well as its recent judicial interpretation by various courts, and then considered the right to vote pursuant to the state Constitution. Applying these federal and state-based rights, the New Jersey Supreme Court found "little room for doubt" of denial of the right to vote. "They were subject as a class to questioning beyond all other applicants, including applicants who were freely registered though their situations indicated that they were comparably shortterm residents of their communities[.]"

The *Worden* court ordered broad relief, and specified that the right to register to vote locally includes: 1) students who plan to return to their previous residences; 2) those who plan to remain permanently in their college communities; 3) those who plan to obtain employment away from their previous residences; and 4) those who are uncertain of their future plans.

This practical application has been widely recognized and upheld in light of the purpose of the 26th Amendment and, importantly, further bolstered by the United States Supreme Court in *Symm v. United States.* By 1979, a residency challenge had finally made its way before the United States Supreme Court, on appeal from a three-judge district court panel in Texas.[101]

The case, which will be discussed in more detail in chapter four, arose from Prairie View A&M University (PVAMU), an HBCU whose history stretches back to the First Reconstruction, situated in a rural Texan county largely comprising white voters.[102] As soon as the 26th Amendment was ratified, Mr. Symm, the Waller

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100 For example, in *Carrington v. Rash*, the United States Supreme Court in 1965 found unconstitutional a Texas law prohibiting military voters from registering to vote from their military base for fear of carpetbagging due to their transient nature. Similarly, in *Dunn v. Blumstein*, the United States Supreme Court in 1972 found that a law professor who moved to Tennessee for a new job could not be denied the right to vote because he did not satisfy the state's one-year residency requirement, which the state tried to justify as a means to ensure the engagement of "knowledgeable voters" who could exercise their rights "more intelligently."

101 *Symm v. United States*, 439 U.S. 1105 (1979), affirming *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

102 The name for this subsection's title is inspired by an opinion editorial by former Texas State Senator Rodney Ellis on the persistent Black student voter suppression in Waller County. See

County election official, imposed a residency questionnaire on PVAMU students, resulting in various court litigations. Even the Texas Secretary of State got involved on behalf of the students, visiting the campus ten times in just seven months ahead of the 1976 November election, to inform them of their right to register from their campus address. The Secretary of State also visited Mr. Symm to explain the proper application of the law, to no avail.

On October 14, 1976, the United States finally stepped in by filing a suit, arguing that the residency questionnaire was part of a "pervasive pattern of conduct which has the effect and intent of depriving dormitory students at Prairie View of their rights under the 14th, 15th, and 26th Amendments."[103] It was the first and only time that the United States Department of Justice brought an affirmative challenge to enforce the 26th Amendment.

Testimony was collected by PVAMU students and administrators, the Texas Secretary of State, students from the University of Texas, who confirmed that they routinely were able to register to vote, and 70 voter registrars from nearly every Texas county containing an institution of higher education—none applied Mr. Symm's presumption of non-residency when registering students to vote.[104]

After a full consideration of the record, the three-judge district court panel reached its conclusion swiftly: enjoin Mr. Symm from violating the constitutional rights of PVAMU dormitory students, as had been advocated by the State of Texas, Secretary of State, and the Attorney General of Texas. The United States Supreme Court summarily affirmed the decision on direct appeal, giving the decision below precedential value for the rest of the nation.[105] It was the only time to date that the Supreme Court has substantively ruled on a 26th Amendment challenge.

Several themes emerge from the body of case law related to evolution of the right to vote and youth voting rights, as to why students should at least have the opportunity to register to vote from their campus residential addresses:

1. Young people, as a protected class with respect to ballot access, should not be singled out from other voters to prove permanence or allegiance to a geography. In many cases, older adults may own multiple homes, for example. Older adults are also highly mobile, as are renters. Election administration must be uniformly applied in a manner which upholds the *fundamental* right to vote.

Rodney Ellis, "Jim Crow Goes to College," *New York Times*, August 27, 1992, https://www.nytimes.com/1992/04/27/opinion/jim-crow-goes-to-college.html.

103 *United States v Texas*, 445 F. Supp. 1245, 1248 (S.D. Tex. 1978).

104 *United States v Texas*, 445 F. Supp. 1245, 1248 (S.D. Tex. 1978).

105 For brief explanation of the precedential value of summary affirmance by the Supreme Court, see Bromberg, "Youth Voting Rights and the Unfulfilled Promise," 1134, n. 121.

2. While it may be true that students make a commitment to live in college communities for at least four years, the *class* of students remains fixed. Thus, even if we were to assume that students always come and go for a four-year interval, the class's interests must nonetheless be represented.
3. Students are included in the Census count in their college communities, and thus federal and state funds are budgeted and distributed accordingly, benefitting the entire jurisdiction. The local tax base is also often heavily derived from the student population.
4. Students have unique interests and needs, and have a right to elect local, state, and federal representatives which advance those interests. For example, young voters are interested in college affordability, environmental protection, and housing affordability on the local level when they live in off-campus communities. They have a constitutional right to be able to elect representatives that are attuned to their specific needs.
5. Young people don't always have an alternative address from which to vote. Directing election materials to a different address, or having to travel to that address to vote, may be costly or impossible.

One would think, given the unanimity of the court decisions reached by state and federal courts, and upheld by the United States Supreme Court, that the right to vote from campus would no longer be tampered with today. Yet, as history has proven in the long fight for democracy, officials empowered with the responsibilities of non-partisan election administration will nonetheless at times impose their own worldview until some combination of organizing, advocacy, and litigation halt their erroneous conduct.[106]

5 Conclusion

Given the history of constitutionalism in the United States, it should be no surprise that the promise of the 26th Amendment was not guaranteed upon ratification, and that it remains unfulfilled over 50 years later. After all, it took a century following the ratification of the Reconstruction Amendments between 1865 and 1870 for Congress to enact laws to enforce those constitutional rights, including by passage of the Voting Rights Act of 1965. Similarly, it took 60 years after ratification of

106 For more on current obstacles to youth voting rights, see Yael Bromberg, "The Future Is Unwritten: Reclaiming the Twenty-Sixth Amendment," *The Rutgers University Law Review* 74, no. 5 (Summer 2022): 1685–1689, https://rutgerslawreview.com/wp-content/uploads/2023/02/01_Bromberg.pdf.

the 14th Amendment and its guarantee of equal protection under law for the 19th Amendment to be ratified in 1920 extending the suffrage to women. The nation's Second Reconstruction forced a reckoning with the perverse reversion that followed the nation's first constitutional renewal, as physical and political racial violence calcified.

When young Americans turned to expanding their own suffrage at the end of the Second Reconstruction, it was not in a vacuum. They inherited a tradition of visionary youth leadership in then-recent history, such as the freedom rides which mobilized from college communities to join south-bound buses in a public transportation desegregation campaign; the North Carolina A&T Four of Greensboro (ages 17 and 18) who sparked a restaurant desegregation sit-in campaign which inspired fellow HBCU and other students across the country, and which later went on to inspire the SNCC; and Freedom Summer volunteers like Andy Goodman (age 20) who was among the 650 student volunteers recruited from northern college communities to register Black voters in the belly of the beast, Mississippi.

This tradition of youth as constitutional architects goes back to the nation's founding, and continues through the nation's first project of constitutional renewal, such as Frederick Douglass who escaped slavery just three years before taking the stage at the Massachusetts Anti-Slavery Society in 1841 (age 23), and Ida B. Wells (age 21) who in 1883 achieved some limited success when she sued to enforce her rights against segregation on a Tennessee train, and was awakened in this process to later emerge as the nation's foremost chronologist on the viciousness of the era of lynching. The trend of youth-led constitutionalism continued through women's suffrage, such as Alice Paul (age 22) who went on to lead the push for the 19th Amendment and wrote the first Equal Rights Amendment of 1923.

Empowered by the understanding of the evolution of the right to vote, young leaders in the late 1960s and early 1970s came to Congress to advocate for their own enfranchisement, backed by a national youth-led initiative they built with a multifaceted, diverse, and multigenerational coalition. Ian MacGowan, co-founder of the Youth Franchise Coalition, testified before the Senate Subcommittee on Constitutional Amendments how "American democracy has survived for nearly two centuries … to broaden the franchise so as to continue to be truly representative … [and] remain viable." Philomena Queen, NAACP youth organizer, testified,

> I know that it seems revolutionary to some that the voting age should be lowered, but I submit to you that these same feelings existed during the years when women, age 21 and over, were denied the right to vote. … [W]e the voteless minority of this country are intelligent,

> interested, sensitive to the issues of our society, and have earned the right to be included. There is no justifiable reason for keeping us shut out.

There was no denying the moral and political truth of their call for youth suffrage. Patricia Keefer first joined the youth suffrage movement in an early Ohio state-based campaign to lower the voting age to 19. She was 24 years old when she quit her job to join the campaign, startled by the horrors of the war in Vietnam she learned from wartime letters from her young brother who would never return home.[107] Keefer went on to co-lead the Youth Franchise Coalition which ushered in the introduction of the 26th Amendment, and then joined Common Cause to lead the state-based efforts once the measure was sent from Congress to the states for ratification. When she reflects on the campaign for youth suffrage, Keefer often reminds listeners of its wide appeal in Appalachia and other areas of middle America. The human cost of the mandatory military draft was borne by the farming and working-class communities across the nation, which reflects the diversity of the states to formally ratify the Amendment into the United States Constitution. The Amendment became so popular that states raced to be among the requisite 38 to formally approve ratification, with some dispute as to whether North Carolina, Ohio, or Alabama actually marked the 38th state.

The collective college communities from whence these efforts often arose have been central to the process of American constitutionalism and the shaping of democracy. In Tuskegee in the 1950s, these efforts were primarily faculty-led, with some student support, challenging the state legislature and the county government. They culminated in the creation of a new voting rights legal jurisprudence and informed responsive federal legislation such as the Civil Rights Act of 1960. Throughout the Second Reconstruction, college communities were a central nexus for youth political engagement and recruitment. These efforts also culminated in multiple successful lawsuits before the Warren Court and responsive federal legislation such as the Voting Rights Act of 1965. In the decade following ratification of the 26th Amendment, youth voter suppression unfolded on campuses across the nation, be it primarily white, wealthier campuses like Princeton Univer-

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107 Patricia Keefer, interviewed by Yael Bromberg, March 19, 2025. See also "The Lady is a Lobbyist: Pat Keefer works for Common Cause," *Cincinnati*, November 1973, in 26th Amendment Collection, Modern Political Papers Collection, Indiana University Libraries, Bloomington, Indiana. See also Center for Youth Political Participation, "Constitution Day 21: Fulfilling the Promise of the Twenty-Sixth Amendment," Eagleton Institute of Politics, 2021, Webinar Video: 1:00, https://cypp.rutgers.edu/constitution-day-2021. A rich archive of materials, including documents, interviews, and webinars of the movement for the Twenty-Sixth Amendment is archived in the Indiana University Libraries, Modern Political Papers.

Figure 7: Patricia Keefer worked on the 19-year-old vote state-based campaign in Ohio, and then was recruited to move to Washington, D.C. to work on the Youth Franchise Coalition's national campaign to lower the voting age to 18. She then joined the newly-organized Common Cause to set up its national network of local organizations and get the Twenty-Sixth Amendment ratified by the states. Keefer is pictured here in her Washington, D.C. office on March 8, 1971. Bettman via Getty Images.

sity in New Jersey, or HBCUs like in Prairie View, Texas located in majority-white county communities. At Prairie View A&M University, response efforts were primarily student-led, and, at least in the 1970s, eventually gained support from the federal and state government to challenge the incalcitrant county election administrator.

In the case of youth voting rights, different types of 'special burdens' of the youth vote persist today, be it unnecessary restrictions on student voter residency or restrictions on other qualification proofs such as voter identification, the gerrymandering of college campuses, and situating polling places far off-campus. Several of these contemporary special burdens will be described in further detail in the case studies in this book, particularly in the chapters dedicated to Prairie View A&M University, North Carolina A&T University, and Bard College. These restrictions ignore the premise of the 26th Amendment, "to encourage greater political participation on the part of the young" in furtherance of a stronger republic, and they overlook this nation's rich social fabric of persistent and strategic resistance to voter suppression.

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