

# To Celebrate The We Must Honor Its

By Alan H. Bowie, Jr.

On February 3, 2020, the United States celebrated the 150th Anniversary of the ratification of the 15th Amendment to the United States Constitution, which gave Black men the right to vote. In celebrating the anniversary and understanding the promise of the amendment, it is important to understand the history of voting rights for Black Americans, the United States' failure at times to enforce the amendment, and the continued fight for equal access to the ballot.

## A Brief History of Black Voting Rights

The 15th Amendment was passed during the Reconstruction Era as the United States was wrestling with how to integrate and whether to provide rights to its newly found citizens. In the five years prior to its ratification, the United States also ratified the 13th Amendment abolishing slavery and involuntary servitude (except as punishment for a crime) and the 14th Amendment, which purported<sup>1</sup> to give Black Americans



WE  
insure domestic Tranquillity, and our Posterity, do ord  
Section 1. All legislative Powers herein granted  
Section 2. The House of Representatives shall be  
composed of the States, who shall have the Qualifications  
No Person shall be a Representative who shall not  
when elected, have seven years residence in this  
Representatives and direct Taxes shall be apportioned  
among the States which shall hold the same. The actual  
number of Representatives shall not exceed one for every  
thirty thousand Persons. The number of Representatives  
shall not be less than thirty. The Electors in each State  
shall have the Qualifications requisite for Electors in that  
State.







S.R. 8.

Pub. Res. 10.

# Fortieth Congress of the United States of America;

At the *Third* Session,

Begun and held at the city of Washington, on Monday, the *seventh* day of *December*, one thousand eight hundred and *sixty-eight*.



## A RESOLUTION

*Proposing an amendment to the Constitution of the United States.*

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring) that the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures shall be valid as part of the Constitution, namely:

### Article XV.

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

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

*Spencer Co. Fox*

Speaker of the House of Representatives.

*J. B. Hoar*

President of the Senate pro tempore.

*Attest:*

*Clifford W. Prentiss*

Clerk of House of Representatives.

*Geo. C. Carham*

Secy of Senate U.S.

The House Joint Resolution proposing the 15th amendment to the Constitution, December 7, 1868; Enrolled Acts and Resolutions of Congress, 1789-1999; General Records of the United States Government; Record Group 11; National Archives.

citizenship and equal rights under the law. These amendments collectively became known as the “Reconstruction Amendments” and were meant to transform the United States into a nation that extended civil and legal protections to the formerly enslaved. History has shown that we have fallen far short of extending fully these protections without significant activism, additional legislation, and significant legal intervention.

The 15th Amendment proved initially successful. In 1870, there were approximately four million Black Americans. With access to the ballot, Black men were successful in exercising their new-found right and elected other Black men to federal, state, and local offices. These successes, however, were quickly met with resistance and violence. White supremacist groups, such as the Ku Klux Klan, began using acts of violence and terror, including killing Black men exercising their rights to vote, to discourage and suppress voting rights. In response, the federal government intervened by passing the Enforcement Acts, which were criminal codes protecting Black men’s right to vote, hold office, serve on juries, and receive equal protection under the law. Federal intervention became key in ensuring that the 15th Amendment lived up to its promise and that Black men were not prevented from exercising their rights. This changed abruptly after the 1877 presidential election.

To ensure victory in a hotly contested election, President Rutherford B. Hayes pledged to southern states that he would no longer enforce federal protections of Black voting rights and allowed states to introduce racially discriminant voting laws. As a result, the federal government no longer protected Black men at the polls from acts of intimidation, violence, and terror. Instead, Black male voters were introduced to additional forms of voter suppression, such as poll taxes, literacy tests, and “grandfather clauses,” which would limit the 15th Amendment by ensuring that most Black men were disenfranchised. These forms of voter suppression persisted for nearly a century and served as a blueprint for suppressing the Black vote. In that period, significantly fewer Black men were elected to federal, state, and local offices.

### Failures of the Amendment

One of the initial failures of the 15th Amendment is that it did not apply to women. The plain text of the Amendment states that it applies to “citizens,” however, women did not have the right to vote until nearly 50 years later. It became clear after the passage of the Amendment that voting rights were reserved only for men despite the plain text.

One of the fundamental failures of the 15th Amendment is that we have too often ignored it. We have failed to fulfill the promise of the Amendment by failing to protect adequately the rights of Black voters. We have far too often allowed racially (whether facially neutral or otherwise) discriminatory voting laws and practices to prevent equal access to the ballot. Voting is one of

the most powerful rights an American citizen can exercise and the place where we are all equal. It is, therefore, imperative that federal and state governments make real the mandate of the 15th Amendment and ensure that voters’ rights are not suppressed based on their race (or sex.)

### Continued Fight for Access to the Ballot

History has shown that the fight for equal access to the ballot is not yet over. This year we also celebrate the 55th Anniversary of the Voting Rights Act of 1965 (VRA), which made illegal the discriminatory practices that marginalized the Black vote for nearly a century and is one of the most important pieces of legislation in American history. In celebrating these anniversaries, we must be honest about our history and our failure to provide equal voting rights.

We must be honest about the way the laws we enact affect people of color and those who have historically had their voting rights suppressed. We must question whether the laws we pass and the legal opinions we reach have some resemblance to the discriminatory laws and decisions that once so diluted the power of the 15th Amendment that it had almost no effect and many Black voters were disenfranchised for no justifiable purpose. We must critically question the ways and the reasons for which we (or others) draw voting districts, particularly before key elections. In recognizing the power of the right to vote as one of the most important exercises in our society, we must have a broad enough vision that we can all share fully, fairly, and equally in the process.

We have made progress by the concerted and enduring efforts of many individuals, like the late Congressman John Lewis, and those individuals who we will never come to know by name but made similar sacrifices. In honoring their sacrifices and fulfilling the promise of the 15th (and 19th) Amendment, we must continue to make equal access to the ballot a priority.

Our Constitution does not explicitly reference a right to vote. However, the first thing it seeks to establish after a more perfect Union is Justice.<sup>2</sup> Based on our history, we should revel at the prospect of disenfranchisement of those who have fought hard for the right to vote and should aim to fulfill the promise of the 15th Amendment by creating and enforcing equitable voting laws. ■

---

*Alan H. Bowie, Jr. is an associate at Carmody Torrance Sandak & Hennessey in the firm’s Business Services and Litigation Groups. Attorney Bowie is the current president of the George W. Crawford Black Bar Association and serves on the CBA’s Diversity and Inclusion Committee, the Executive Committee of the Labor and Employment Section, and the Council of Bar Presidents.*

#### NOTES

1. See *Plessy v. Ferguson*, 163 U.S. 537 (1896)
2. See Preamble to the United States Constitution.