

Lesson 20

VOTING AND THE CONSTITUTION

Lesson Objectives

When you complete Lesson 20, you will be able to:

- Discuss the various amendments of the Constitution that are related to the right to vote.
- Describe the purpose and history of the Fifteenth Amendment.
- Explain the Nineteenth Amendment and describe the strategies of the women's suffrage movement.
- Summarize the history of poll taxes and explain the purpose of the Twenty-fourth Amendment.
- Outline the purpose of the Twenty-sixth Amendment and the impetus for its development.

Elections are an essential element of our constitutional republic. As the preceding lessons reveal, the Founders crafted unique processes for selecting members of the House of Representatives, the Senate, the Executive, and the judiciary. Under the Constitution of 1787, the House of Representatives was the only branch directly elected by the people, and the Constitution deferred to the states to establish qualifications for voters. The officers in other branches were selected by the people indirectly through state legislatures or other constitutional mechanisms.

In previous lessons, we have discussed several constitutional amendments that altered the election processes for specific institutions or their officers: The Twelfth Amendment added the Vice President to the ballot in the Electoral College; the Seventeenth Amendment enables the direct election of Senators; the Twenty-second Amendment limits the number of terms a President may serve. The following amendments, however, focus on the qualifications for voters themselves rather than on the institutions or officers elected to them.

Unit 7

Suffrage: Race – Amendment XV*Essay by Earl Maltz (pp. 409–411)*

The Fifteenth Amendment was the last of three Reconstruction Amendments. Ratified in 1870, it prohibits both the federal and state governments from restricting an individual's ability to vote because of his "race, color, or previous conditions of servitude." It also grants Congress the authority to pass legislation for the purpose of enforcing this amendment.

The purpose of the Fifteenth Amendment was to require states to give blacks the right to vote. Several years prior to the amendment, the Joint Committee on Reconstruction advocated the idea of suffrage for all races. Lacking northern support and fearing a political backlash, the committee dropped the proposal. By 1869, the situation had changed, and it became evident that a constitutional amendment was necessary.

There was a deep divide over the language of the Fifteenth Amendment. At first, the House of Representatives favored a version quite similar to the one ultimately adopted. However, many Republicans thought that the language was too narrow because states could easily prevent freed slaves from voting by introducing qualifications impossible to meet. To address this issue, the Senate added language prohibiting discrimination on the basis of "nativity, property, education, or creed" for purposes of voting or holding office. Finally, the House of Representatives and the Senate drafted new versions of the amendment and ultimately passed the shortened and simplified version that appears in the Constitution.

Because of the difficulty of agreeing on the precise language of the amendment, the framers adopted a simple prohibition on discrimination on the basis of race, color, and previous condition of servitude. There was a risk that a court could interpret the amendment narrowly and thereby allow seemingly neutral statutes to limit suffrage. In fact, many states did pass just such seemingly neutral statutes (for instance, making literacy tests a prerequisite for voting). Initially, the Supreme Court upheld these statutes. More recently, however, it has invalidated such statutes as violations of the Fourteenth and Fifteenth Amendments.

Under Section 2 of the amendment, Congress has the power to enforce the Fifteenth Amendment, but the scope of this power is unclear. It is questionable whether this clause gives Congress power to regulate the actions of private parties. Supreme Court decisions are divided on this question. At first, the Court ruled that Congress could not regulate purely private activity. Since 1941, however, the Court has upheld expansive congressional power over non-governmental actors. Recent decisions have upheld a variety of legislative measures designed to combat racial discrimination.



Before you Read

Ask: Have you ever heard of the term “suffrage”? What do you think it means? (The term “suffrage” refers to the right to vote.) If freed blacks received the right to vote, do you think state governments would still have the ability to prevent these individuals from exercising that right? (Answers will vary. Sample answer: Governments could still restrict the ability of these individuals to exercise their voting rights. For example, many former slaves were illiterate; therefore, literacy tests as a prerequisite to register to vote would prevent voting.)



Make an Inference

Read the section at the top of page 410 regarding the Senate’s proposal for how the Fifteenth Amendment should be worded (begin with “responding to these and other concerns” and end with “hold elective office”). Ask: If this version of the Fifteenth Amendment had been adopted instead of the shorter one that appears in the Constitution, what can you infer about the effects of this amendment? (Answers will vary. Sample answer: The language might have prohibited states from passing seemingly neutral laws that restrict voting rights based on education, ability to pass a literacy test, or property ownership.)

Suffrage: Sex – Amendment XIX

Essay by Tiffany Jones (pp. 417–419)

The Nineteenth Amendment to the Constitution prohibits the federal government or state governments from denying individuals the right to vote on the basis of sex. It also grants Congress the power to impose this rule through legislation.

The Constitution introduced in 1787 was a gender-neutral document: It did not prohibit women from voting. The Framers gave individual states the power to determine who could participate in elections. All states granted men suffrage. New Jersey was the only state to grant both women and men suffrage. Because the Constitution did not prohibit women from voting, no constitutional amendment was technically necessary for women to exercise suffrage. This is evident in the variety of strategies that the women’s suffrage movement used to secure the right to vote.

The roots of the women’s suffrage movement can be traced to a meeting in Seneca Falls, New York, in 1848. During Reconstruction, however, the movement gained traction.

There were three main strategies to secure voting rights for women. The first involved the interpretation of the Fourteenth Amendment. Section 2 of that

amendment prohibited denying “male inhabitants” the right to vote, suggesting that the Constitution granted only men the right to vote. Proponents of women’s suffrage argued that the Citizenship Clause and the Privileges or Immunities Clause of the Fourteenth Amendment prevented states from denying women the right to vote in federal elections. In *Minor v. Happersett* (1874), the Supreme Court dismissed this argument.

The second strategy focused on convincing individual states to remove voting qualifications related to sex. These efforts were eventually quite successful. Wyoming entered the Union in 1890 with women’s suffrage, becoming the first state since New Jersey to allow women to participate in elections on an equal basis with men. By the time the Nineteenth Amendment was ratified, 30 states granted voting rights to women for members of the House, members of the Senate, or the President.

The third and final strategy involved amending the Constitution to prevent states from imposing sex-based voting qualifications. The first such amendment was proposed in 1869. In 1897, a California Senator proposed what would become the Nineteenth Amendment. The Amendment was ratified in 1920 with essentially the same wording as the Fifteenth Amendment.

There has been little litigation over the Nineteenth Amendment. The Supreme Court addressed the amendment directly in *Breedlove v. Suttles* (1937), a case in which Georgia law exempted women from a tax but required men to pay it upon registering to vote. The Court ruled that the amendment protected the right of both men and women to vote but did not limit a state’s authority to tax voters.



Active Reading

Ask: How was the Fourteenth Amendment both a setback and an opportunity for the women’s suffrage movement? (The second section of the Fourteenth Amendment contains the word “male.” The clause could be interpreted to mean that only men were granted voting rights, but proponents of women’s suffrage interpreted the Citizenship Clause and the Privileges or Immunities Clause of the amendment to mean that states could not prevent women from voting in federal elections.)



Research It

Have students research the women’s suffrage movement, using the “Suggestions for Further Research” on pages 418 and 419 or by conducting independent Internet research. Potential topics include the relationship of women’s suffrage to America’s founding principles, the loss of voting rights for women between 1777 and 1807, or the 1848 meeting in Seneca Falls, New York. Have students write a few paragraphs on their topic to share with the class.

Poll Taxes – Amendment XXIV

Essay by David F. Forte (pp. 427–429)

The Twenty-fourth Amendment prohibits poll taxes as a prerequisite to vote in elections for the President, presidential electors, and Members of Congress. It also grants Congress the power to enforce this amendment with appropriate legislation.

Poll taxes began in the 19th century, when many states had property requirements for voting. Those who did not own property could pay a poll tax to vote. By the time of the Civil War, many states had eliminated both property requirements and poll taxes for voting. Poll taxes resurfaced in the Southern states beginning in 1889 to circumvent the Fifteenth Amendment and to prevent blacks from voting. Poll taxes also burdened the poor in general (including poor whites) and women.

Beginning in 1939, legislation was introduced in each Congress to eliminate poll taxes. By the time the Twenty-fourth Amendment was ratified, only five states used poll taxes. However, poll taxes had survived legal challenges—for example, in *Breedlove v. Suttles* (1937). Therefore, Congress still found an amendment necessary to prevent voter disenfranchisement by means of poll taxes. Some argued that Congress could outlaw poll taxes through the enforcement powers of the Fourteenth and Fifteenth Amendments. Proponents of the Twenty-fourth Amendment argued that a specific poll-tax amendment would prevent voter disenfranchisement of the poor and would curb political corruption and fraud related to poll taxes. The final text of the Twenty-Fourth Amendment prohibited poll taxes in *federal* elections; it did not address state elections. Shortly after the ratification of the Twenty-fourth Amendment, Congress passed the Voting Rights Act of 1965, which made poll taxes in state elections problematic.

The Supreme Court interpreted the Twenty-fourth Amendment quite broadly in *Harman v. Forssenius* (1965). When ruling that a Virginia statute requiring citizens either to pay a poll tax or to file a certificate of residence to participate in federal elections was unconstitutional, the Court reasoned that the amendment prohibited not only denial, but also abridgement of the right to vote. Therefore, certain onerous procedural requirements that impede the exercise of the right to vote were held to violate the Twenty-Fourth Amendment.

The Supreme Court ruled in *Harper v. Virginia State Board of Elections* (1966) that poll taxes in *state* elections were unconstitutional because “any [state that] makes the affluence of the voter or payments of any fee an electoral standard” violates the Equal Protection Clause of the Fourteenth Amendment (a conclusion the framers of the Amendment did not intend). Justice John Marshall Harlan observed that such reasoning rendered the Twenty-fourth Amendment superfluous.

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Check Understanding

Justice John Marshall Harlan stated that the logic employed by the Supreme Court during one case made the Twenty-fourth Amendment “virtually superfluous.” **Ask: Can you explain in your own words what Justice Harlan meant by this?** (Answers will vary. Sample answer: During one case, the Supreme Court ruled that under the Equal Protection Clause, citizens could not be charged any type of fee to vote in an election. Since a poll tax is a type of fee and fees were prohibited under the Equal Protection Clause, Justice Harlan reasoned that the Court’s decision meant the Twenty-fourth Amendment was an unnecessary addition to the Constitution.)



Write About It

Write the following prompt on the board: **Congress is considering a law that would require individuals to sign a form verifying that they filed their federal income tax return before voting. Write a brief letter to your Congressman, advising him or her about the *constitutionality* of this law (not whether the law is or is not good policy). Make your argument about the Constitution’s text, not the Court’s probable interpretation of the law.** Give students time to prepare their written responses and then ask for volunteers who are willing to share their answers with the class. (Answers will vary. Sample answer 1: I would advise my member of Congress that this law is unconstitutional because the Twenty-fourth Amendment forbids denying the right to vote for failing to pay any “poll tax or other tax.” Requiring individuals to verify that they filed their income taxes is tantamount to requiring individuals to pay a tax before voting. Sample answer 2: I would advise my member of Congress that the law was constitutional. Requiring people to verify that they filed their federal taxes is not the same as requiring people to pay a tax to vote. Requiring citizens to verify that they filed income tax returns is more similar to requiring citizens to verify their address.)

Unit 7

Suffrage: Age — Amendment XXVI

Essay by Robert Levy (pp. 431–433)

The Twenty-sixth Amendment establishes that U.S. citizens who are 18 years of age or older have the right to vote and that Congress can introduce legislation to enforce this requirement. Although it is often suggested that the Vietnam War draft prompted the creation of the Twenty-sixth Amendment, this was not the case. A Supreme Court case prompted the amendment. In *Oregon v. Mitchell* (1970), the Supreme Court ruled that Congress did not have the authority to lower the voting age for participation in local and state elections. Rather than establishing separate systems for voting in state and federal elections, states supported the Twenty-sixth Amendment,

2. In most states, incarcerated felons lose their right to vote. Based on what you have studied, does the Constitution prohibit this practice? (The Constitution allows voter disenfranchisement under the Fourteenth Amendment, which allows states to abridge the right to vote in cases of rebellion or other crimes.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 20. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

1. Poll taxes of the Southern states adversely affected which group of people?
 - a. blacks
 - b. women
 - c. the poor
 - d. all of the above**
2. When Congress ratified the Poll Tax Amendment, how many states retained a poll tax?
 - a. five**
 - b. nine
 - c. 20
 - d. all of the Southern states
3. Requiring anyone to pay a poll tax in order to vote is forbidden by
 - a. Amendment XXI.
 - b. Amendment XXII.
 - c. Amendment XXIII.
 - d. Amendment XXIV.**
4. Congress made black suffrage mandatory in the former Confederate states through the
 - a. Federal Election Campaign Act.
 - b. Civil Rights Act of 1866.
 - c. Civil Liberties Act.
 - d. Reconstruction Act of 1867.**
5. The first mention of the word "male" in the Constitution appears in the
 - a. Thirteenth Amendment.
 - b. Fourteenth Amendment.**
 - c. Fifteenth Amendment.
 - d. Sixteenth Amendment.

6. Which state had allowed women to participate in elections in the 1700s?
 - a. Delaware
 - b. New York
 - c. Illinois
 - d. **New Jersey**

7. The Twenty-sixth Amendment was developed mainly in response to the
 - a. Vietnam War.
 - b. revised Voting Rights Act of 1965.
 - c. **case of *Oregon v. Mitchell*.**
 - d. case of *Jolicoeur v. Mihaly*.

Fill in the blank: Write the correct word or words in each blank.

1. The Fifteenth Amendment prohibited denying individuals the right to vote based on their color, race, or past condition of _____. (**servitude**)

2. The Nineteenth Amendment has virtually the same wording as the _____ Amendment. (**Fifteenth**)

3. Although many states stopped using poll taxes by the mid-19th century, the practice became common again in the South following the _____. (**Civil War**)

Short answer: Write out your answer to each question.

1. The origin of the organized women’s suffrage movement has generally been traced to what gathering? (**the 1848 gathering in Seneca Falls, New York**)

2. The Fifteenth Amendment granted what? (**The right to vote regardless of race, color, or previous condition of servitude**)

3. Which Amendment grants the right to vote regardless of sex? (**the Nineteenth Amendment**)

4. Which word did not even appear in the Constitution until the Fourteenth Amendment was ratified in 1868? (**male**)

