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"When Did African Americans Get the Right to Vote in Georgia?"

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I often pose to my third-year law students the question that is the title of this Article. I can see in their faces that they think it's a trick question. And it is. The obvious answer—the post-Civil War Fifteenth Amendment[1] guaranteed citizens of all races the right to vote—surely cannot be the answer I'm looking for. The best response I have received so far to my trick question came not from a law student but rather from a high school junior. I sprung the question on her and her fellow students as we sat in the courtroom where the answer to my question can be found. Her retort—"male or female?"—assuaged somewhat my concerns over civics education and revealed a flaw in my question. Female suffrage came decades after the Civil War. So here I add two words to my question to make it more clear and less tricky: When did *all* African Americans *really* get the right to vote in Georgia? Even when cleaned up few know the answer.

On July 4, 1944, Primus King, a Columbus barber and part-time preacher, walked into the Muscogee County Courthouse to vote in the Democratic primary election.[2] Primus King was Black.[3] As he entered the courthouse, a detective grabbed him and asked, "[W]hat in the hell are you doin' n_____?"[4] King responded that he intended to vote in the

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1. U.S. CONST. amend. XV.

2. Gary Sprayberry, *Primus King and the Postwar Struggle for Voting Rights in Georgia: Remarks at the Dedication of the Primus King Historical Marker*, 29 J. MUSCOGEE GENEALOGICAL SOC'Y 12, 15 (2018).

3. Mike Bunn, *An Interview with Primus King, Conducted by Paul A. Davis*, 29 J. MUSCOGEE GENEALOGICAL SOC'Y 17, 22 (2018); Chapman v. King, 154 F.2d 460, 461 (5th Cir. 1946).

4. BUNN, *supra* note 3, at 23.

Democratic primary.[5] The detective told him "ain't no n_____ votin' here today."[6] The detective's declaration, vulgar as it was, was correct. The Democratic Party allowed only white Georgians to vote in its primaries.[7] King left the courthouse with several detectives following him.[8] Although scared ("those detectives would kill you, mean"), King kept a level head.[9] He told one of the detectives that's "[a] nice looking gray suit you got on," and that seemed to calm things down.[10] King then walked three blocks to "the lawyer's office."[11]

The lawyer was Oscar D. Smith, Sr., who had agreed to assist in a challenge to the practice of denying African Americans the right to vote in primary elections.[12] On August 22, 1944, Smith, who would be joined by Macon attorney Harry Strozier, filed a complaint on behalf of King in the United States District Court for the Middle District of Georgia, contending that the white primary violated King's constitutional rights.[13] The defendants were the members of the Muscogee County Democratic Executive Committee.[14] They would be represented by noted Macon constitutional lawyer Charles Bloch, a staunch states' rights advocate, and his partner, Ellsworth Hall, Jr.[15]

In a 1973 interview, King described a telephone call he received as news of his lawsuit spread:

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5. *Id.*
6. *Id.*
7. SPRAYBERRY, *supra* note 2, at 15.
8. BUNN, *supra* note 3, at 23.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. King v. Chapman, 62 F. Supp. 639 (M.D. Ga. 1945).
14. *Id.* at 640.
15. *Id.* at 639. Charles Bloch (1878–1974), the author of *States Rights: The Law of the Land*, was fated to be on the wrong side of history. He likely would have thrived in the post-Reconstruction era when Congress and the courts were ceding broad powers to Southern states. The "likely" qualification is necessary because he was a Jew (a Jewish White Supremacist, according to Clive Webb) and whether Georgia voters and lawmakers would have embraced him is an open question. *See* Charles Bloch, *Jewish White Supremacist*, 83 GA. HIST. Q. 267, 271 (1999). Had he been born later, his scholarly attacks on "judicial activism" (Bloch may well have coined the term) would have put him in the forefront of modern legal conservatism. But in his time, being the country's foremost expert on states' rights assured only failure. For extensive discussion of Bloch's long battle against voting rights and desegregation, *see* Mary Ellen Maatman, *Speaking Truth to Memory: Lawyers and Resistance to the End of White Supremacy*, 50 HOW. L.J. 1, 34–35, 39, 47–50, 58–59, 66–68, 87–88 (2006).

> An old cracker called me and said: "Are you the [n-word] that caused so much trouble about this voting around here in the white primary?" I say: "I'm not the [n-word], sir, but I'm Primus King." He said: "You must want to be put in the river." I said: "Well, they've put so many negroes in the river for nothing, I'm willin' to go in there for something!" He hung the phone (laughs). So then the thing was on the way then, we had the trial in Macon, [before] Judge [T. Hoyt] Davis in Macon.[16]

Before discussing that trial, a more basic issue needs some discussion. How was it possible that a Georgia citizen in 1944 could be denied the right to vote solely and expressly because of his race? The Civil War amendments to the Constitution seemed clear. The Thirteenth Amendment abolished slavery.[17] The Fourteenth Amendment barred any state from abridging the privileges or immunities of citizens, guaranteed citizens due process of law, and barred states from denying citizens the equal protection of law.[18] The Fifteenth Amendment barred states from denying citizens the right to vote on account of race, color, or previous condition of servitude.[19] The amendments granted Congress broad power to enforce these new rights.[20] What had happened to those amendments and laws? The answer is the United States Supreme Court.

Immediately following the Civil War, President Andrew Johnson took a lenient approach to "restor[ing]" the states that had rebelled against the Union.[21] Johnson authorized pardons for most white southerners if they would swear allegiance to the United States and disclaim any "right or title to slaves[.]"[22] During the short-lived period of Presidential Reconstruction, the southern states managed their internal affairs with little interference. Taking advantage of Johnson's leniency, southern legislators began enacting "Black Codes,"[23] laws that severely restricted the rights of freedmen.[24] In short, it seemed the postbellum South would look much like the antebellum South.

This did not sit well with Republicans in Congress. Although most southern states had met Johnson's requirements for readmission to the Union by the time the 39th Congress convened in the fall of 1865, the

16. BUNN, *supra* note 3, at 23–24.
17. U.S. CONST. amend. XIII.
18. U.S. CONST. amend. XIV.
19. U.S. CONST. amend. XV.
20. *See, e.g.*, U.S. CONST. amend. XIII, § 2.
21. ERIC FONER, RECONSTRUCTION, 1863–1877, 199 (1st ed. 1988).
22. *Id.* at 183; Andrew Johnson, Proclamation (May 29, 1865).
23. FONER, *supra* note 21, at 199.
24. *Id.*

House refused to seat southern delegations.[25] In response to the Black Codes, Congress passed the Civil Rights Act of 1866[26]—over President Johnson's veto.[27] In the 1866 Congressional elections, Republicans increased their majorities in Congress, giving them the power to set the terms of Reconstruction.[28] Thus, when southern states refused to ratify the Fourteenth Amendment, Congress simply required ratification as a condition to representation in Congress.[29] The Amendment was then promptly adopted.[30] In 1870, when most of the southern states were controlled by reconstruction Republicans, the states ratified the Fifteenth Amendment.[31] Congress supplemented these amendments with enforcement legislation.[32] For example, the Force Acts,[33] or Ku Klux Klan (KKK) Acts, extended federal protection for Black suffrage and authorized the use of federal troops to combat the Klan's intimidation of former slaves.[34]

Unpacking the angst of Reconstruction is far beyond the scope of this Article and the abilities of its Author. But this much can be said—voters and Congress had put in place measures that should have guaranteed the core civil rights of the country's formerly enslaved citizens, most notably the right to vote. But if Reconstruction is to be judged by whether the Constitutional rights of the formerly enslaved were actually protected, Reconstruction was a dismal and abject failure.

The "gutt[ing]"[35] of those rights began in 1873 with a group of cases, now called the *Slaughter-House Cases*,[36] which had nothing to do with

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25. E. MERTON COULTER, GEORGIA: A SHORT HISTORY, 364 (1933).

26. Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866).

27. FONER, *supra* note 21, at 247, 250; Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866).

28. FONER, *supra* note 21, at 267.

29. COULTER, *supra* note 25, at 364.

30. U.S. CONST. amend. XIV (ratified 1868).

31. U.S. CONST. amend. XV (ratified 1870).

32. FONER, *supra* note 21, at 454.

33. Act of May 31, 1870, ch. 114, 16 Stat. 140; Act of Feb. 28, 1871, ch. 99, 16 Stat. 433; Act of Apr. 20, 1871, ch. 22, 17 Stat. 13.

34. FONER, *supra* note 21, at 454–55.

35. The Author participated in a panel discussion during which Justice Clarence Thomas called the *Slaughter-House Cases* a "huge mistake." Although not an exact quote, Justice Thomas said something to the effect that "pig entrails gutted the Fourteenth Amendment." Well, at least the Privileges and Immunities Clause of the Fourteenth Amendment. *See* Maeve Glass, *Killing Precedent: The Slaughter-House Constitution*, 123 COLUM. L. REV. 1135, 1137 (2023). If nothing else, the *Slaughter-House Cases* spawned a legion of meaty metaphors.

36. 83 U.S. 36 (1872).

race.[37] The City of New Orleans, in the exercise of what today would be called its police powers, enacted ordinances confining slaughterhouses to particular locations.[38] New Orleans's butchers contended that the law deprived them of the privileges and immunities of citizenship guaranteed by the new Fourteenth Amendment.[39] Although the Supreme Court at the time was dominated by Republican-appointed Justices, it seems that those Justices did not share the views of the Republicans in Congress. Ignoring, many have argued, the text of the Fourteenth Amendment, the Court held that the Fourteenth Amendment did not protect a state citizen from the legislative power of his state.[40] Of course, the Fourteenth Amendment had to mean something, and the Court concluded that it applied only to the privileges and immunities of *federal* citizenship.[41] As dissenting Justice Stephen Field noted, the majority opinion rendered the Fourteenth Amendment a "vain and idle enactment[.]"[42] If the Amendment only protected against state infringement of federal rights specifically found in the Constitution, then the Fourteenth Amendment did little more than protect the right to run for federal office, the right to use navigable waterways, and the right to be safe from piracy on the high seas.[43]

Generally, despite some revisionist efforts, the *Slaughter-House Cases* are seen as an early example of judicial activism—surely, the argument goes, the "founders" of the Privileges and Immunities Clause were not concerned with the Freedmen's rights to be safe from pirates.[44] But the Supreme Court had just begun. On Easter Sunday, 1873, white militiamen attacked Republican Freedmen at the courthouse in Colfax,

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37. FONER, *supra* note 21, at 529.

38. *Slaughter-House Cases*, 83 U.S. at 59.

39. *Id.* at 66. Ignoring not only the text, some argue, but also the clear intent of the framers—Congress. *See* Kevin Christopher Newsom, *Setting Incorporationism Straight: A Reinterpretation of the Slaughter-House Cases*, 109 YALE L.J. 643, 647 (2000). Prominent commentators

> have scoured the historical materials surrounding the framing of the Fourteenth Amendment and have demonstrated that there was substantial consensus among members of the Thirty-Ninth Congress who crafted the Fourteenth Amendment that the Privileges or Immunities Clause (and not the Due Process Clause, as is commonly assumed today) would serve as the primary vehicle for protecting individual rights against state infringement.

Id.

40. *Slaughter-House Cases*, 83 U.S. at 77.

41. *Id.* at 77–78.

42. *Id.* at 96 (Field, J., dissenting).

43. *Id.* at 79–80.

44. *See* GLASS, *supra* note 35, at 1137–38 n.11 (collecting sources); *see also Slaughter-House Cases*, 83 U.S. at 59.

Louisiana.[45] Estimates of Black deaths range from 100 to 280, many of whom died after they were captured.[46] Federal authorities charged several of the militiamen with violating the Enforcement Act of 1870,[47] which, among other things, outlawed conspiracies to deprive individuals of their constitutional rights.[48] In 1876, the Supreme Court, in *United States v. Cruikshank*,[49] overturned the convictions.[50] Because the Privileges and Immunities Clause of the Fourteenth Amendment had been effectively nullified by the *Slaughter-House Cases*, the United States argued that the Amendment's Due Process and Equal Protection Clauses authorized Congress to provide for the prosecution of those who violated a state citizen's constitutional rights.[51] The Supreme Court disagreed, holding that those clauses applied only to state action.[52]

Next, in what has come to be called *The Civil Rights Cases*,[53] the Supreme Court in 1883 struck down The Civil Rights Act of 1875,[54] which barred discrimination in public facilities such as inns, trains, ferries, and theaters.[55] An eight-justice majority held that Congress lacked constitutional authority to outlaw racial discrimination by private entities.[56]

Today, the decision is best known for the dissenting opinion of Justice John Marshall Harlan.[57] Harlan took issue with the Court's holding that Congress lacked authority to legislate in the field of public accommodations and services.[58] Harlan first assailed the majority's, using again the modern term, judicial activism:

> Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of

45. FONER, *supra* note 21, at 437, 530–31.

46. *Id.* at 437.

47. Enforcement Act of 1870, 41 Cong. ch. 114, May 31, 1870, 16 Stat. 140.

48. FONER, *supra* note 21, at 530.

49. 92 U.S. 542 (1876).

50. *Id.* at 559.

51. *Id.* at 553.

52. *Id.* at 554–55.

53. United States v. Stanley (*The Civil Rights Cases*), 109 U.S. 3 (1883).

54. The Civil Rights Act of 1875, 43 Cong. ch. 114, March 1, 1875, 18 Stat. 335.

55. *Id.* at 336.

56. *The Civil Rights Cases*, 109 U.S. at 26; Congress would not again enact civil rights legislation until the Civil Rights Act of 1957. The Civil Rights Act of 1957, PL 85-315, Sept. 9, 1957, 71 Stat. 634.

57. *The Civil Rights Cases*, 109 U.S. at 26 (Harlan, J., dissenting).

58. *Id.* at 28 (Harlan, J., dissenting).

> another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.[59]

Harlan then proceeded to illustrate his point by turning to various pre-Civil War acts of Congress protecting the rights of slaveholders.[60] In several cases, the Supreme Court, noting that the Constitution implicitly protected the rights of slaveholders, held that Congress had the authority to pass legislation requiring the return of slaves who had escaped to free states.[61] Harlan saw no difference between the implied power of Congress to legislate the conduct of individuals to protect the rights of slaveholders and the power of Congress to legislate the conduct of private entities seeking to deprive freed slaves of their new constitutional rights.[62] This was particularly true, Harlan argued, when Congress confined legislative power to operations closely tied to public services.[63] Railroads, though privately-owned, were by law public highways; and it was an appropriate function of government to ensure that the railroads were available for public conveyance.[64] Innkeepers too had long been recognized to provide "a sort of public serv[ice]" that they could not deny to the public.[65] In short, if discrimination were permitted in these public operations,

> It seems to me that . . . a denial, by these instrumentalities of the State, to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the State, within the meaning of the Fourteenth Amendment. If it be not, then that race is left, in respect of the civil rights in question, practically at the mercy of corporations and individuals wielding power under the States.[66]

Given the Supreme Court's limited view of the expanse of the Civil War amendments and Congress's power to enforce them, state legislatures came to realize that even discriminatory state action was possible. Most notably, the Louisiana legislature enacted in 1890 legislation requiring railroads to "provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate

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59. *Id.* at 27–28 (Harlan, J., dissenting) (quoting *Sinking Fund Cases*, 99 U.S. 700, 718 (1878)).

60. *Id.* at 29–35.

61. *Id.* at 30.

62. *Id.* at 33–34.

63. *Id.* at 36.

64. *Id.* at 37–38.

65. *Id.* at 41.

66. *Id.* at 59.

accommodations[.]"[67] A group of prominent New Orleans' residents, with the collusion of the railroad industry (which was not particularly pleased with the law either), conceived a plan to challenge the law.[68] Homer Plessy, an octoroon whose "colored blood was not discernible in him," purchased a first-class ticket on the East Louisiana Railway.[69] When he refused to leave his seat in the white coach, he was arrested,[70] and the case of *Plessy v. Ferguson*[71] began.[72]

Plessy contended that Louisiana's "separate but equal" laws violated the Thirteenth and Fourteenth Amendments.[73] Seven justices of the Supreme Court disagreed.[74] Other than its holding, nothing in the majority opinion has proved to be particularly memorable. Its tone is illustrated by Justice Brown's rejection of the argument that there was anything inherently wrong with segregation.

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.[75]

Justice Harlan's dissent, his "great dissent," on the other hand, is well known.[76] He made clear the pernicious nature and effect of the principle established by the majority's ruling.[77] If a state could confine blacks to separate railroad cars, they could also require blacks to use one side of the street and whites the other.[78] States could separate Protestants from

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67. Plessy v. Ferguson, 163 U.S. 537, 540 (1896) (citing 1890 La. Acts No. 111, p. 152).

68. Mary Ann Wegmann, The Law Library of Louisiana, University of New Orleans History Department & Nik Richard, *Plessy v. Ferguson*, NEW ORLEANS HISTORICAL, https://neworleanshistorical.org/items/show/320 [https://perma.cc/85Y9-PBC8] (last visited Nov. 14, 2023).

69. *Plessy*, 163 U.S. at 541.

70. *Id.* at 542.

71. 163 U.S. 537 (1896).

72. *Id.* at 537.

73. *Id.* at 542.

74. *Id.* at 542–44.

75. *Id.* at 551.

76. Charles Thompson, *Plessy v. Ferguson: Harlan's Great Dissent*, UNIVERSITY OF LOUISVILLE BRANDEIS SCHOOL OF LAW, https://louisville.edu/law/library/special-collections/the-john-marshall-harlan-collection/harlans-great-dissent [https://perma.cc/YK4T-3X5Q] (last visited Nov. 14, 2023).

77. *Plessy*, 163 U.S. at 559.

78. *Id.* at 557–58.

Catholics and native from naturalized citizens.[79] Harlan could not square this with the Constitution.

> But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.
>
> In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case.[80]

Other cases can be discussed,[81] but the consequences of judicial retrenchment is clear. The modest successes of Republicans in the South were erased, and the old Democrat Party returned to power.[82] By the turn of the century, the Civil War amendments were but hollow shells—*de jure* discrimination and even enforced servitude[83] had returned to the South.

Although violence and intimidation played a role in the marginalization of the Freedmen,[84] the perpetuation of a stratified,

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79. *Id.* at 558.

80. *Id.* at 559.

81. See, for example, Williams v. Mississippi, 170 U.S. 213 (1898) (approving voter literacy tests and poll taxes); Giles v. Harris, 189 U.S. 475 (1903) (upholding voter registration and qualification requirements that were used to eliminate black voters).

82. Although these white Republicans are often depicted as scalawags, their ranks included prominent respected men of the South, many of whom were decorated veterans of the war. FONER, *supra* note 21, at 297.

83. To address the Emancipation-induced labor shortage, the South turned to peonage and the chain gang. Peonage, or debt bondage, is a form of "involuntary and unpaid" servitude within the meaning of the Thirteenth Amendment. Jamison v. Wimbish, 130 F. 351, 355 (S.D. Ga. 1904), *rev'd*, 199 U.S. 599 (1905); *see also* Clyatt v. United States, 197 U.S. 207 (1905); Taylor v. State of Ga., 315 U.S. 25 (1942).

84. A significant role according to Georgia historian E. Merton Coulter, a frank critic of Reconstruction, Republicans, and Freedman and defender of states' rights, or home rule as he called it. Coulter wrote that the Ku Klux Klan's "most spectacular work was done in convincing the Negros that politics was a game reserved exclusively for the white man." COULTER, *supra* note 25, at 372. To make his point he cites two 1868 Georgia elections. *Id.*

white-dominated society turned upon the control of the state legislatures that passed the laws requiring segregation and discrimination. If Blacks could vote, a new coalition could threaten that control. Thus, it became necessary, or so Democratic lawmakers thought, to ensure that Blacks would never be a part of a voting majority. That brings us to the white primary.

After the Civil War, the Democratic Party apparatus in each Georgia county named a county's delegates to the Party's state convention and those delegates decided the Party's nominees in the general election.[85] By the late 1870s, when Democrats again dominated Georgia, their nominees rarely faced opposition in the general election. Consequently, securing the Party's nomination was tantamount to election.[86] Various methods were used by the county-level organization to select delegates, but rank-and-file voters had no direct opportunity to vote for the various hopefuls seeking the Party's nomination.[87] Rather, political machines, then called Rings, vied for control or support of local party officials.[88] The Ring that controlled the most counties, ruled the Party.[89]

The first significant challenge to machine domination of the Party came in 1886 when former Confederate General John B. Gordon, with the critical support of Henry Grady, sought the Party's nomination for governor.[90] At the time the Macon Ring controlled the Party, thus its candidate, Augustus O. Bacon, almost certainly would prevail at the Party's nomination convention.[91] Grady, the publisher of *The Atlanta Constitution* and the champion of a "New South," thought Gordon,

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Congressional Reconstruction had ensured Freedmen could vote and in April Republican Rufus Bullock was elected Governor. *Id.* at 369, 372. Yet in the November presidential election, Georgia was the sole southern state carried by Democrat Horatio Seymour. *Id.* at 372. That was because, Coulter concluded, the "Negro was almost eliminated" by the Klan. *Id.* For example, in Columbia County, 1,222 Republicans voted in April; one voted in November. *Id.*

85. ALBERT B. SAYE, A CONSTITUTIONAL HISTORY OF GEORGIA 1732–1945, 357 (1948); Ralph Lowell Eckert, *John Brown Gordon: Solider, Southerner, American*, 340–41 (1983) (Ph.D. dissertation, Louisiana State University and Agricultural and Mechanical College); CHARLES S. BULLOCK III, ET AL., THE THREE GOVERNORS CONTROVERSY, 9–13, 63 (2015).

86. ECKERT, *supra* note 85, at 350.

87. SAYE, *supra* note 85, at 357.

88. ECKERT, *supra* note 85, at 343.

89. *Id.* at 342–43, 346; *see* BULLOCK III, ET AL., *supra* note 85, at 12.

90. ECKERT, *supra* note 85, at 333, 338.

91. *Id.* at 333.

because of his Civil War record,[92] was more popular with voters.[93] Enlisting the help of Confederate veterans, Grady agitated at the county level for direct primary elections "in order that the will of the people may be surely ascertained."[94] Of course, the "people" were white men, but still, Grady's "revolt against the politicians" was seen as a reform measure that would wrest control of the Party from political bosses.[95] Gordon won enough delegates in those counties holding primaries to secure the party's nomination, and he was elected governor.[96] The idea of giving the "people" the vote proved popular and in 1898, the Democratic Party made direct primary elections the sole method of selecting delegates to its state convention.[97] Grady's "reform" had become one of the most effective means devised to suppress the Black vote.[98]

At first, the Democratic Party alone determined how its primary elections would be run.[99] Gradually, however, the General Assembly imposed more and more requirements on primary elections. Most notably, in 1917, the General Assembly passed the Neill Primary Act,[100] which required political parties conducting primary elections (which meant the Democratic Party) to use the county unit system.[101] Under that system, a candidate receiving the most votes in a county's primary election was entitled to that county's "unit[s]" at the party's nominating convention.[102] A county's "units" were determined by the number of

92. *Id.* at 333–34. Gordon, in large part because of Grady's influence, was seen as the "Very Embodiment of the Lost Cause." *Id.* at 351. Not incidentally, Gordon had headed the Ku Klux Klan in Georgia. COULTER, *supra* note 25, at 371.

93. ECKERT, *supra* note 85, at 345.

94. *Id.* at 340.

95. SAYE, *supra* note 85, at 357.

96. ECKERT, *supra* note 85, at 350.

97. SAYE, *supra* note 85, at 357.

98. *Id.* at 356.

99. *Id.*

100. GA. CODE ANN. § 34-3212 (1933).

101. SAYE, *supra* note 85, at 356–57.

102. *Id.* at 358; BULLOCK III, ET AL., *supra* note 85, at 9–12. The Neill Primary Act gave each county at a party's nominating convention two votes for each representative it had in the lower house of the General Assembly. Based on this formula, by 1944, Georgia's 159 counties had a total of 410 county unit votes. Fulton County, with a population of more than 500,000, had six of these votes, two for each of its three representatives. The three smallest counties, Glascock, Quitman, and Echols, with a combined population of less than 7,000, matched the voting strength of Fulton County at the Democratic Party's nominating convention. *See* Sanders v. Gray, 203 F. Supp. 158 (N.D. Ga. 1962), *vacated,* 372 U.S. 368 (1963); South v. Peters, 89 F. Supp. 672 (N.D. Ga. 1950), *aff'd,* 339 U.S. 276 (1950); In re Pitch, 275 F. Supp. 3d 1373, 1376 n.2 (M.D. Ga. 2017).

representatives the county had in the General Assembly.[103] Each county had at least two units and the most populous, Fulton, had only six.[104] Like the white primary, the county unit system was not, initially, a tool designed to disenfranchise Blacks; the white primary had achieved that goal. Rather, the county unit system was designed to ensure that rural counties determined the winners of state elections.[105] But coupling the white primary with the county unit system proved an effective means of eliminating any Black (and Atlanta) influence in state elections. Blacks could not vote in primary elections, and even if they could join with urban voters to create a sizeable voting bloc in general elections, that bloc could not overcome the county unit system.[106]

When Primus King filed his lawsuit in 1944, the white primary and the county unit system were firmly entrenched. Although the Supreme Court had held earlier that year, in *Smith v. Allwright*,[107] that the Texas white primary was unconstitutional,[108] the Texas primary was far different, or so Georgia Democrats thought, from their primary. In Texas, the legislature had incorporated the white primary into its electoral process, making the Democrat Party, in its operation of the primary, an agency of the State.[109]

The Middle District of Georgia's sole judge, Bascom S. Deaver, died October 13, 1944.[110] On January 3, 1945, President Roosevelt nominated T. Hoyt Davis to succeed Deaver.[111] The Senate confirmed Davis on January 29.[112] Before his appointment, Davis had been the United States Attorney for the Middle District, and before that, he was Senator Walter F. George's law partner.[113] Thus, the fate of the white primary in Georgia rested with a close associate of Georgia's senior Democrat, who, like all Democratic politicians, had a vested interest in the white primary.

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103. BULLOCK III, ET AL., *supra* note 85, at 10.

104. COULTER, *supra* note 25, at 437.

105. *See id.*

106. BULLOCK III, ET AL., *supra* note 85, at 10.

107. 321 U.S. 649 (1944).

108. *Id.* at 664.

109. *Id.* at 663.

110. Federal Judicial Center, *Biographical Directory of Article III Federal Judges, 1789–present*, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/history/judges [https://perma.cc/72TS-F5G8] (search, "Deaver, Bascom Sine") (last visited Nov. 14, 2023).

111. Federal Judicial Center, *Biographical Directory of Article III Federal Judges, 1789–present*, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/history/judges [https://perma.cc/72TS-F5G8] (search, "Davis, Thomas Hoyt") (last visited Nov. 14, 2023).

112. *Id.*

113. *Id.*

The three-day nonjury trial began in Macon on September 12, 1945.[114] Throughout the trial, Judge Davis pressed Bloch, "What alternative do the Negros have?" [115] Eventually, Bloch conceded that they could form their own party or find a white political party that would admit them.[116] Judge Davis ruled on October 12, 1945.[117] He began by noting the pervasive control that Democrats had on Georgia's politics.[118] Since 1900, every Democratic nominee for a statewide office had prevailed in the general election. Both United States Senators and all congresspersons were Democrats.[119] Further, no other party had held a statewide primary since 1900.[120] Judge Davis then noted the various ways in which the General Assembly had exerted control over the Democratic primary. He cited dozens of statutes that had some impact on the Democrats' white primary.[121] By far, the most significant of these laws was the Neill Primary Act[122] and the county unit system it imposed.[123] He acknowledged that Georgia had not gone quite as far as Texas in exerting control over primary elections, but he nevertheless concluded that "a fair consideration of the foregoing Georgia statutes leads to the conclusion that whenever a political party holds a primary in this state, it is by law an integral part of the election machinery."[124] Accordingly, Judge Davis held that the white primary was unconstitutional and ruled for King, awarding him $100.00, the stipulated amount of damages.[125]

On March 6, 1946, the Fifth Circuit Court of Appeals affirmed Judge Davis.[126] The determinative fact for the Fifth Circuit was the Neill Primary Act: "This Act appears in large measure to take such primaries out of the control of the parties initiating them, and to substitute the State's will in determining the mode of choice of the party nominee."[127]

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114. *Columbus Negro Seeks $5,000 In Federal Court in Vote Case*, MACON TELEGRAPH, Sept. 13, 1945, at 2; *Muscogee Negro Ballot Suit Is Heard Here*, MACON NEWS, Sept. 12, 1945, at 1.

115. ANDREW M. MANIS, MACON BLACK AND WHITE: AN UNUTTERABLE SEPARATION IN THE AMERICAN CENTURY 153 (1st ed. 2004).

116. *Id.*

117. *King*, 62 F. Supp. at 639.

118. *Id.* at 650.

119. *Id.*

120. *Id.*

121. *Id.* at 642–49.

122. GA. CODE ANN. § 34-3212 (1933).

123. *King*, 62 F. Supp. at 644–45.

124. *Id.* at 649–50.

125. *Id.* at 650.

126. *King*, 154 F.2d at 464.

127. *Id.*

News of the Fifth Circuit's affirmance of Judge Davis' ruling came as Georgia's leading Democrats were jockeying to see who would succeed popular and relatively progressive Governor Ellis Arnall.[128] Arnall had unsuccessfully sought the repeal of the bar against a governor succeeding himself, but he remained a political powerbroker.[129] Populist Eugene Talmadge, who had served three controversial terms as Governor, wanted to return to the Governor's mansion for a fourth time.[130] Few thought that would happen. With the end of the war and the return of economic prosperity, most thought Georgia was ready to move forward rather than backward.[131]

That changed with the news of the federal courts' "second emancipation" of the "Negro[]" as *Atlanta Daily World* publisher C. A. Scott put it.[132] Race would be the issue in the gubernatorial primary, and few knew how to play the race card better than Gene Talmadge.[133] On

128. *See* BULLOCK III, ET AL., *supra* note 85, at 66. There is some evidence that Arnall orchestrated Primus King's white primary challenge. In a 1947 interview, state representative John J. Flynt said, "Ellis Arnall forced the issue by sponsoring the Primus King case, and all Talmadge did was to exploit the people's resentment." CALVIN KYTLE & JAMES A. MACKAY, WHO RUNS GEORGIA?, 152 (1998). In his book, *The Shore Dimly Seen*, which was written before the vicious 1946 primary election, Arnall lauded Judge Davis's decision. ELLIS GIBBS ARNALL, THE SHORE DIMLY SEEN, 59 (1946). He wrote that he had resisted "a tremendous amount of political pressure" to convene a special session of the Georgia General Assembly to somehow enact legislation that would bar Blacks from voting in the Democratic primary. *Id.* Most Georgia citizens, according to Arnall, "supported overwhelmingly my determination not to call such a session . . . and the State Executive Committee of the Democratic party went forward with plans to permit participation of Negro voters in the primary." *Id.* at 59–60. He predicted "there will be a ready acceptance of the court's decision." *Id.* at 59. That, unfortunately, did not happen.

Who Runs Georgia? is a compilation of interviews of 78 prominent Georgians conducted during the spring and summer of 1947. KYTLE & MACKAY, *supra.* The interviews provide real-time reactions to the events set in motion by Judge Davis' decision ending the white primary. The interviewees covered the political and social spectrum and they spoke frankly, using the often-vulgar vernacular of those times. A good contrast can be found in the interviews of Methodist preacher Mac Anthony, revered to this day by Georgia United Methodists, and Baptist preacher Jack Johnston. At the time both headed congregations in Columbus. Reverend Anthony stated flatly, "the White Primary is contrary to the Kingdom of God." *Id.* at 245. Johnston, on the other hand, was incensed.

Mention of the white primary started him off. "'N____ say they want to vote,' he said. 'What they really want is to mix the blood. They want to have our women and wipe out the white race.' He paused dramatically, waiting for his point to sink in. 'Mongrelization. That's what they want.'" *Id.* at 248.

129. BULLOCK III, ET AL., *supra* note 85, at 64.

130. *Id.* at 66.

131. *See id.* at 66–67.

132. WILLIAM ANDERSON, THE WILD MAN FROM SUGAR CREEK, 220 (1975).

133. BULLOCK III, ET AL., *supra* note 85, at 81, 84.

April 6, 1946, just after the Supreme Court declined to hear *Chapman v. King*,[134] Talmadge announced his candidacy.[135] Thus began Eugene Talmadge's infamous race-baiting campaign for a fourth term as governor.[136]

Governor Arnall and the Atlanta newspapers backed Cobb County industrialist James V. Carmichael.[137] But Talmadge knew the county unit vote would determine the winner and his campaign focused on the rural counties.[138] Throughout that spring and summer, he rallied rural (meaning outside Atlanta) crowds with highly inflammatory racist appeals.[139] Dirty tricks were also a Talmadge favorite. Before a major Carmichael event in Moultrie, Talmadge's campaign tacked fliers throughout Moultrie's black section inviting all of Carmichael's "colored friends" to come to his rally.[140] However, most of Talmadge's campaign techniques were far from humorous and while it may have only been rhetoric for Talmadge, many of his supporters took him quite seriously.[141] Talmadge's racists attacks and appeals focused squarely on *Chapman v. King*:

> 'Alien influences and communistic influences from the East are agitating social equality in our state. They desire Negroes to participate in our white primary in order to destroy the traditions and heritages of our Southland . . . . I shall see that the people of this state have a Democratic white primary unfettered and unhampered by radical, communist and alien influences.'[142]

Talmadge claimed the election would decide the questions of whether "'white people would continue to run the state'" rather than "'Moscow Harlem Zoot suiters.'"[143] "'If white people fail to control Georgia during the next four years our Jim Crow laws are gone and our pretty little white children will be going to school with Negroes, sitting in the same desk.'"[144]

But many Georgians were appalled at Talmadge's blatantly racist attacks and they rallied around Carmichael.[145] It was an epic battle

134. 154 F.2d 460 (1946).
135. BULLOCK III, ET AL., *supra* note 85, at 66–67.
136. *Id.* at 66, 81.
137. *Id.* at 67.
138. *Id.* at 81–82.
139. *Id.*
140. ANDERSON, *supra* note 132, at 226.
141. BULLOCK III, ET AL., *supra* note 85, at 81, 83.
142. *Id.* at 81 (citation omitted).
143. *Id.* at 82.
144. *Id.* (citation omitted).
145. *Id.* at 117.

between what then was called liberalism and conservatism. The 1946 Democratic primary, now open to Black voters, would decide the course Georgia would take. A record turnout—including up to 100,000 Blacks—resulted in a popular vote win for Carmichael, a pyrrhic victory; Talmadge won the county unit vote 242 to 146.[146]

That was not the end of the campaign, however. Talmadge's attack on the courts for ending the white primary and his calls for a white response found a receptive audience. The day after the election, four white men took Maceo Snipes, the only African American to vote in Taylor County, from his house and shot him dead.[147] In July, a large crowd stopped two young black couples at Moore's Ford Bridge in Walton County and riddled their bodies with gunfire.[148] The Walton County Sheriff told a reporter the next day that he had no clues or suspects and nothing could be done.[149] He added, however, "[t]hey hadn't ought to killed the two women." [150] A man standing nearby then commented: "This thing's got to be done to keep Mister N____ in his place. Since the court said he could vote, there ain't been any holding him."[151]

Talmadge's victory made clear that ending the white primary was only the first step in the struggle for voting rights. Over the next twenty years, federal courts whittled away various legislative voting impediments, including the county unit system. However, as Chief Justice Roberts put it, "litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African-Americans barely improved."[152] This led Congress to enact the Voting Rights Act of 1965,[153] which, according to Chief Justice Roberts, "has proved immensely successful" and "there is no denying that, due to the Voting Rights Act, our Nation has made great strides."[154]

So, the answer to the question is that African Americans got the right to vote in 1946. Tens of thousands of Georgia's Black citizens, newly enfranchised by *King v. Chapman*, went to the polls in the 1946

146. ANDERSON, *supra* note 132, at 232; BULLOCK III, ET AL., *supra* note 85, at 116; KYTLE & MACKAY, *supra* note 128, at 69. As successful as Talmadge's white supremacy campaign had been, he would not see his fourth term. His death before he could be sworn in started Georgia's three governors' controversy.

147. KYTLE & MACKAY, *supra* note 128, at 72, 275.

148. BULLOCK III, ET AL., *supra* note 85, at 245–46; ANDERSON, *supra* note 132, at 233.

149. ANDERSON, *supra* note 132, at 233.

150. *Id.*

151. *Id.*

152. Shelby Cnty., Ala. v. Holder, 570 U.S. 529, 536 (2013).

153. 89 P.L. 110; 79 Stat. 437.

154. *Shelby County.*, 570 U.S. at 549.

gubernatorial primary and their votes helped deliver a popular vote victory to a reform candidate.[155] Although the county unit system nullified that victory, the end of the white primary was the first step in has been called the South's second reconstruction.[156] Judge Davis' ruling in Primus King's case should be remembered as one of the first steps in that fight for voting rights.

Somehow, the Democrats never paid Primus King his $100.00.[157] In 1977, when King was seventy-six, someone realized the mistake, and the Muscogee County Democratic Executive Committee finally gave King a check for the $100.00 judgment, plus interest in the amount of $324.70.[158]

155. BULLOCK III, ET AL., *supra* note 85, at 116–17.

156. ANDERSON, *supra* note 132, at 232.

157. BUNN, *supra* note 3, at 17, 25.

158. SPRAYBERRY, *supra* note 2, at 15 n.11.