

VOTING RIGHTS: MECHANISM FOR SOCIAL CHANGE

Judge Frank M. Johnson, Jr. Memorial Lecture in Constitutional Rights and Liberties
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Judge J. Michelle Childs

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Judge J. Michelle Childs*

INTRODUCTION

Good afternoon! Thank you, Dean Brewbaker and the University of Alabama School of Law for your gracious hospitality, and Professor Krotoszynski, for that warm introduction.

It is a true honor to be here today at the University of Alabama School of Law to deliver the Frank M. Johnson, Jr. Memorial Lecture on Constitutional Rights and Liberties. I am delighted to participate in this lecture series and to be in the company of the fine jurists who came before me, including Judge Guido Calabresi, who delivered the inaugural lecture in 2019. I am deeply grateful to be part of this special occasion that celebrates the legacy of Judge Johnson, a judicial luminary.

What is the one right that enables every citizen to shape laws, elect leaders, and influence policies that govern all aspects of our society? It is the right to vote. The right to vote is a symbol of full inclusion in the civic body, and the key to having a voice in decisions that shape our everyday lives. It is the bedrock of any democracy. As the late civil rights hero Representative John Lewis once said, “[A] vote is precious, almost sacred. It is the most powerful nonviolent tool we have to create a more perfect union.”¹

Throughout his service as a federal judge, Judge Johnson exemplified the role of judges and the courts in protecting fundamental rights enshrined in the Constitution, including the right to vote. Judge Johnson kept a quote from Abraham Lincoln under a paperweight on his desk.² Part of the quote reads: “I intend to do right, or I have done right. I’ve done what I consider to be right, and I intend to keep doing so until the end.”³ For Judge Johnson, what was “right” was defending the Constitution. And, for him, doing right required

* Circuit Judge, United States Court of Appeals for the District of Columbia Circuit. I am grateful to my career law clerk, Vincent J. Douglas (University of South Carolina School of Law), and externs Emily Teng (Duke University School of Law) and Madison Akers (Georgetown University Law Center). Special thanks to Professor Krotoszynski for his guidance and assistance with this topic and to Professor Daiquiri Steele for her wonderful response to the speech. I would also like to thank the *Alabama Law Review* editorial team for their careful review and helpful suggestions. The views expressed in this Article are my own and do not represent the views of the United States Court of Appeals for the District of Columbia Circuit or the federal judiciary.

1. Representative John Lewis, Address at the 2012 Democratic National Convention (Sept. 6, 2012) (transcript available at <https://www.pbs.org/newshour/show/rep-john-lewis-your-vote-is-precious-almost-sacred> [<https://perma.cc/YPL9-SM7U>]).

2. Kathryn Abrams & Ronald Wright, *Judge Frank Johnson in the Long Run*, 51 ALA. L. REV. 1381, 1383 (2000).

3. *Id.*

judges to identify the legal principles that addressed a controversy at issue and find the best way to secure compliance with those principles.⁴ Judge Johnson sought to do right when confronted with challenges to voting rights and a broad sway of other cases over the forty years of his federal judicial career.⁵ He played a pivotal and crucial role in advancing civil rights—including voting rights—during the 1950s and 1960s.

Yet, the right to vote has not always been guaranteed for all. The history of voting rights in this country is one of both progress and regression. From the early days of the Republic, when voting was reserved for White male property owners, to the battles for suffrage led by women and Black Americans, the right to vote has been both fiercely contested and deeply cherished. The struggle for voting rights has consistently been a battle between forces of exclusion and those advocating for equality. At our best, we have recognized the right to vote as a tool for our collective empowerment. At other times, restrictions on the right to vote have been exploited as a tool for marginalization.

The judiciary has played a critical role in protecting voting rights in this country. Tasked with the responsibility of interpreting the Constitution, the courts have a unique duty to ensure fair and equal access to the ballot box. By protecting the ability of Americans to participate in the political process, judicial decisions on voting rights exemplify the role of the courts in securing our democracy and the continued need for a judiciary that stands as a guardian of equality and justice.

I. THE LAW AS A TOOL OF EXCLUSION

Unfortunately, at times, the law has been used as a tool of exclusion. At regrettable moments in our nation's history, laws have imposed restrictions on the right to vote that have unfairly excluded entire groups of Americans from accessing the ballotbox. Those restrictions weakened our democracy. Today, those historical examples are a reminder that the right to vote is fragile.

When the Constitution went into effect in 1789, it did not say that U.S. citizens have a right to vote.⁶ The Constitution did reference elections,⁷ and under the Elections Clause, gave states the power to determine their own voting laws.⁸ As a result, state legislatures decided who was qualified to vote, which

4. *Id.* at 1383–84.

5. See David J. Garrow, *Visionaries of the Law: John Minor Wisdom and Frank M. Johnson, Jr.*, 109 YALE L.J. 1219, 1230–36 (2000).

6. See, e.g., Travis Crum, *The Unabridged Fifteenth Amendment*, 133 YALE L.J. 1039, 1052–54 (2024) (describing limited protections to the right to vote under the original Constitution).

7. See, e.g., U.S. CONST. art. I, § 2 (in electing members of the House of Representatives, “electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature”).

8. *Id.* art. I, § 4, cl. 1.

generally enabled them to restrict voting to White male landowners.⁹ These restrictions meant that even some White men who did not own property could not vote.¹⁰ And they also meant that, at least as a matter of federal law, women and free Black Americans were not guaranteed the right to vote.¹¹

Despite the federal Constitution's silence on *who* may vote, the Constitution specified *how* electoral power would be apportioned. To that end, the Constitution described how individuals would be counted for purposes of determining a state's representation in the House of Representatives and the Electoral College. The Three-Fifths Clause did not explicitly mention the words "slave" or "slavery," but it provided that an enslaved person would be counted as three-fifths, or sixty percent, of that of a free person when apportioning representatives to Congress.¹² By counting enslaved persons for the purposes of representation, while simultaneously depriving them of their ability to vote, southern states had disproportionately large delegations in Congress to advance their interests in national politics including the preservation of slavery.¹³

The preservation of slavery was not only an issue in Congress but also in the courts. Over half a century after the Constitution was ratified, but a few years before the start of the Civil War, a decision by the U.S. Supreme Court added fuel to the tensions between northern and southern states over slavery. On March 6, 1857, the Supreme Court ruled that Dred Scott, a former slave who had moved to a free state, was not afforded the same rights as free persons. According to the Court, a Black person "whose ancestors were imported into this country, and sold as slaves," whether enslaved or free, could not be a U.S. citizen.¹⁴ In finding that even free Black Americans could not enjoy the other benefits of citizenship, *Dred Scott* entrenched racial exclusion.

Following the end of the Civil War, the Reconstruction Amendments sought to rectify the harms of slavery, including disenfranchisement. The third

9. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 306–07 (rev. ed. 2009) (describing voter qualifications in the Antebellum Period).

10. Keri Leigh Merritt, *Voting Rights and Restrictions in Pre-Emancipation America*, in *THE RIGHT TO VOTE: THE ROLE OF STATES AND THE US CONSTITUTION* 1–2 (2023), <https://www.gilderlehrman.org/sites/default/files/2023-09/FINAL%20Voting%20Rights%20and%20Restrictions%20in%20Pre-Emancipation%20America.pdf> [https://perma.cc/3GY7-F6PT]. For an overview of ideas and debates regarding the scope of the right to vote before the Civil War, see Bertrall L. Ross II, *Fundamental: How the Vote Became a Constitutional Right*, 109 IOWA L. REV. 1703, 1739–51 (2024).

11. See A. Leon Higginbotham, Jr. & Greer C. Bosworth, "Rather than the Free": Free Blacks in Colonial and Antebellum Virginia, 26 HARV. C.R.-C.L. L. REV. 17, 24–26 (1991) (describing disenfranchisement of Free Black Americans in Antebellum Virginia).

12. See U.S. CONST. art. I, § 2, cl. 3 (determining apportionment of state representatives by adding the "whole Number of free Persons" and "three fifths of all other Persons"); *id.* art. II, § 1, cl. 2 (providing that "[e]ach State shall appoint . . . a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress").

13. See AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 20–21 (2005); Dorothy Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 52 (2019).

14. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 403–04 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

and final Reconstruction Amendment—the Fifteenth Amendment—granted Black American men the right to vote.¹⁵ But what was seemingly a victory for equality was almost immediately undermined by loopholes in the Amendment that allowed states to strip that right to vote from Black Americans. Soon after the Fifteenth Amendment was ratified, states enacted laws that imposed poll taxes, literacy tests, and grandfather clauses to prevent Black Americans from voting.¹⁶ For example, in 1890, Mississippi adopted a constitution that required a literacy test and poll tax from would-be voters.¹⁷ As part of the literacy test, a potential voter had to be able to read and reasonably interpret sections of the Mississippi constitution.¹⁸

The Fourteenth Amendment, which guaranteed citizenship and full rights to anyone born or naturalized in the United States, also faced challenges in fulfilling its promise, particularly as to voting rights. In 1898, the U.S. Supreme Court declined to construe the Fourteenth Amendment to ban the use of loopholes to limit the right to vote. In *Williams v. Mississippi*, the Court upheld Mississippi's state poll tax, disenfranchisement clauses, and literacy tests, finding that the state's constitution did not violate the Fourteenth Amendment.¹⁹ Regarding the validity of the state constitutions and statutes that limited voting rights, the Court stated that “it has not been shown that their actual administration was evil; only that evil was possible under them.”²⁰ *Williams* illustrates that, after Reconstruction, even the courts were willing to tolerate voter suppression initiatives, in spite of the Fourteenth and Fifteenth Amendments.²¹

These examples show how law was used as a tool of exclusion both before and after the Civil War. Moreover, with the emergence of Jim Crow laws and the suppression of Black political participation after the end of Reconstruction, the longterm significance of the Reconstruction Amendments was in danger. Nonetheless, the Reconstruction Amendments set an important foundation, a

15. See U.S. CONST. amend. XV, § 1 (“The right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of race, color, or previous condition of servitude.”).

16. See, e.g., Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 3: Black Disfranchisement from the KKK to the Grandfather Clause*, 82 COLUM. L. REV. 835 (1982); Richard Briffault, *The Contested Right to Vote*, 100 MICH. L. REV. 1506, 1515 (2002) (“The Southern states then moved systematically to disfranchise black voters. A wave of constitutional conventions resulted in poll taxes, cumulative poll taxes (requiring that back taxes as well as current taxes be paid as a condition to voting), literacy tests, lengthy residence requirements, elaborate registration systems, and disfranchisement on conviction of a host of petty crimes.”).

17. MISS. CONST. OF 1890, art. 12, § 243; see also Samuel Issacharoff, *Voting Rights at 50*, 67 ALA. L. REV. 387, 391 (2015) (describing barriers to voting rights).

18. MISS. CONST. OF 1890, art. 12, § 244.

19. *Williams v. Mississippi*, 170 U.S. 213, 222 (1898).

20. *Id.* at 225.

21. See, e.g., VA. CONST. of 1902, art. 2, § 21 (poll tax to be paid six months in advance of the election); *Taylor v. Commonwealth*, 44 S.E. 754, 755 (Va. 1903) (holding that the state constitution was valid and had become law in 1902); see also LA. CONST. of 1898, art. 197, §§ 3, 5 (literacy test and grandfather clause); ALA. CONST. of 1901, art. 8, § 180 (grandfather clause).

bedrock for future victories during the Civil Rights Movement, when advocates invoked the language and spirit of these Amendments to challenge unjust voting practices.

II. THE LAW AS A TOOL OF EMPOWERMENT

Although restrictions on the right to vote have been used to exclude people from participating in our constitutional democracy, the belief that the law should protect the right to vote has been a powerful tool for empowerment as well. At different stages in our country's history, marginalized groups have mobilized to protect their right to vote. Courts, in turn, have had an indispensable role in enforcing legal protections for the right to vote.

Before Reconstruction, free Black Americans sought the right to participate in elections. Following the Revolutionary War, several states in New England allowed free Black Americans to vote.²² Even following *Dred Scott*, Black American leaders, including Frederick Douglass, continued to speak out in favor of voting rights for all Americans. For Douglass, the right of Black Americans to vote was protected by the Constitution and fundamental to Black citizenship in our country.

And amid the Civil War, Black Americans, including those who had served in the war, called for their right to vote to be protected. As historian Timothy Huebner recalls, Sergeant Henry J. Maxwell, a soldier in the 3rd U.S. Colored Heavy Artillery exclaimed Black demands for the vote:

We want the rights guaranteed by the Infinite Architect. For these rights we labor: for them we will die. We have gained one—the Uniform is the badge. We want two more boxes besides the cartridge box—the ballot and the jury box. We shall gain them. Let us work faithfully unto that end.”²³

Public advocacy for the right of Black Americans to vote came to fruition after the Civil War with the Reconstruction Amendments.²⁴ In 1865, the Thirteenth Amendment irrevocably abolished slavery throughout the country.²⁵ A few years later, the Fourteenth Amendment became part of the Constitution. This Amendment built upon the foundation of the Thirteenth Amendment by guaranteeing that every person born or naturalized in the United States was a citizen with full rights and protections under the law.²⁶ And upon its ratification

22. Timothy S. Huebner, “In Defiance of Judge Taney”: *Black Constitutionalism and Resistance to Dred Scott*, 45 J. SUP. CT. HIST. 215, 216–17 (2020).

23. *Id.* at 230.

24. See generally ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* (2019) (describing the impact role of the Reconstruction Amendments in refunding the United States as an inclusive democracy).

25. See U.S. CONST. amend. XIII; see also Alexander Tsesis, *Furthering American Freedom: Civil Rights & the Thirteenth Amendment*, 45 B.C. L. REV. 307, 310 (2004).

26. See U.S. CONST. amend. XIV. On the impact of the Fourteenth Amendment on voting rights, see, for example, Crum, *supra* note 6, at 1054–57.

in 1870, the Fifteenth Amendment went further by declaring that the right to vote could not be denied based on race, color, or previous condition of servitude.²⁷ The ratification of these three Amendments sparked a wave of political participation that empowered Black Americans to hold office, propose policy, and envision a new future.²⁸

At the time the Reconstruction Amendments were enacted, Frederick Douglass and other Black activists called for the right to vote to be extended not only to Black men but also to all women.²⁹ Calls for the enfranchisement of women foregrounded the importance of recognizing women as full citizens. It would take several more decades of public pressure by suffragettes before the Nineteenth Amendment—enshrining the right of women to vote—was ratified in 1920.³⁰ Nonetheless, the Fifteenth Amendment set the stage for more robust voting rights for all.

Indeed, although the Reconstruction Amendments were not enough to end attempts to restrict voting rights during Jim Crow, they became a guiding light for future generations to seek equal enfranchisement. The Reconstruction Amendments thus set the stage for a new generation of civil rights laws: the Civil Rights Acts of 1957, 1960, and 1964. In a 1956 letter from Attorney General Herbert Brownell to then-Vice President Richard M. Nixon proposing the new Civil Rights Act, Brownell wrote that “[t]he right to vote is one of our most precious rights. It is the cornerstone of our form of government and affords protection for our other rights. It must be safeguarded.”³¹ The Civil Rights Act of 1957 was the first legislation since Reconstruction, after decades of discriminatory practices, to strengthen civil rights protections, including the right to vote.³² And to enforce the Act, the Department of Justice created the Civil Rights Division to further protect civil rights.³³

Building on this progress, the Civil Rights Act of 1960 aimed to address rampant voter suppression and racially discriminatory restrictions on voting. A crucial component was Title III of the Act, which required “every officer of

27. See U.S. CONST. amend. XV, § 1.

28. See ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877*, at 354 (1988) (describing Black participation in elections, including elected Black public officials); see generally James Fox, *Fourteenth Amendment Citizenship and the Reconstruction-Era Black Public Sphere*, 42 AKRON L. REV. 1245, 1257–67 (2009).

29. See, e.g., MARTHA JONES, *VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE AND INSISTED ON EQUALITY FOR ALL* (2020).

30. See generally Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947 (2002).

31. Letter from Herbert Brownell, Att’y Gen., U.S. Dep’t of Just., to Richard Nixon, Vice President (Apr. 9, 1956), <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/civil-rights-act/1956-04-01-cabinet-paper.pdf> [<https://perma.cc/U4EA-9ZQD>].

32. See generally Civil Rights Act of 1957, Pub. L. 85-315, 71 Stat. 634.

33. Christy Lopez, *The Civil Rights Division: The Crown Jewel of the Justice Department*, 130 YALE L.J.F. 462, 473–74 (2021); DEP’T OF JUST., OFF. OF ATT’Y GEN., ORDER NO. 155-57, ESTABLISHMENT OF THE CIVIL RIGHTS DIVISION IN THE DEPARTMENT OF JUSTICE (1957), <https://www.justice.gov/crt/page/file/918916/download> [<https://perma.cc/S5H4-CZWD>].

election” in the United States to “retain and preserve” all voting-related records for twenty-two months and to produce these records “upon demand in writing by the Attorney General.”³⁴ Following the signing of the Act, Attorneys General William P. Rogers from the Eisenhower Administration and Robert F. Kennedy from the Kennedy Administration requested and examined voting records in twenty-six southern counties with allegations of racial discrimination in voting.³⁵ Based on the evidence of voter suppression they uncovered, the Department of Justice filed nineteen voter discrimination cases against these counties by the end of 1962.³⁶

The 1957 and 1960 Civil Rights Acts paved the way for the Civil Rights Act of 1964, which truly began to swing the pendulum of justice toward voting rights empowerment. Though best known for dismantling segregation and prohibiting discrimination in public spaces and employment, it also strengthened voting rights enforcement.³⁷ In 1962, Congress passed the Twenty-Fourth Amendment which also helped set the stage for the Civil Rights Act of 1964. This Amendment abolished the poll tax, a tool purposefully used to create an economic barrier that kept many Black Americans and indigent people from casting their ballots.³⁸

These efforts culminated in the Voting Rights Act of 1965. The Act went beyond prohibiting discrimination and included affirmative steps to protect voting rights. Its passage led to a dramatic increase in Black political participation. The number of Black voters rose, and more Black Americans were elected to state and local office.³⁹ When President Lyndon B. Johnson signed the Act into law on August 6, 1965, he remarked that the Act sought to “right [the] wrong” that “[m]illions of Americans are denied the right to vote because of their color.”⁴⁰ By eliminating literacy tests, empowering federal oversight, and strengthening the Attorney General’s power to challenge discriminatory practices, the Voting Rights Act realized what had been

34. Civil Rights Act of 1960, Pub. L. 86-449, § 301–06, 74 Stat. 86, 88; *see also* William Sturkey, *The Hidden History of the Civil Rights Act of 1960*, BLACK PERSPS. (Feb. 8, 2018), <https://www.aaihs.org/the-hidden-history-of-the-civil-rights-act-of-1960/> [<https://perma.cc/7PAA-LUPV>].

35. Sturkey, *supra* note 34.

36. *Id.*

37. *Legal Highlight: The Civil Rights Act of 1964*, OFF. OF THE ASSISTANT SEC’Y FOR ADMIN. & MGMT., U.S. DEP’T OF LABOR, <https://www.dol.gov/agencies/oasam/civil-rights-center/statutes/civil-rights-act-of-1964> [<https://perma.cc/KV9P-Q57K>].

38. *Abolition of Poll Taxes*, NAT’L CONST. CTR., <https://constitutioncenter.org/the-constitution/amendments/amendment-xxiv> [<https://perma.cc/66A5-8Y6F>].

39. *See* U.S. CONST. amend. XXIV; *see also* Andrea Bernini et al., *Race, Representation, and Local Governments in the US South: The Effect of the Voting Rights Act*, 131 J. POL. ECON. 994, 996–97 (2023); *150 Years and Counting*, NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/exhibitions/reconstruction/voting-rights> [<https://perma.cc/B6UV-JVQ4>].

40. Lyndon B. Johnson, President of the U.S., Remarks on the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at <https://millercenter.org/the-presidency/presidential-speeches/august-6-1965-remarks-signing-voting-rights-act> [<https://perma.cc/4CEG-XEY5>]).

envisioned a century earlier: a democracy where every voice was heard and accounted for.

The Reconstruction Amendments and each piece of civil rights legislation that preceded the Voting Rights Act faced fierce opposition. Restrictions on the implementation of the Reconstruction Amendments may have seemed to blunt the shift toward equality. Yet, taken together, the Reconstruction Amendments and the Civil Rights Acts demonstrate the power of law to bend the arc of history toward justice.⁴¹ Each constitutional amendment and piece of legislation was a crucial and indispensable step in chipping away at a deeply entrenched system of voter suppression.

The struggle for voting rights is a reminder that progress is never guaranteed. As Dr. King once said, “Change does not roll in on the wheels of inevitability, but comes through continuous struggle.”⁴² Advocates and lawmakers pushed for change. Without their relentless pressure, voting rights would have remained distant aspirations. It took people—leaders and ordinary citizens alike—willing to march, petition, lobby, and sometimes even put their lives on the line, to make these changes happen.

III. THE JUDICIARY’S ROLE IN DEFINING VOTING RIGHTS

What was the judiciary’s role in defining voting rights? Each of these voting rights laws, while powerful, was only as strong as the judiciary’s commitment to uphold them. Through landmark decisions, the federal courts interpreted the law and set precedents that profoundly underscored that the right to vote was fundamental and an indispensable part of our constitutional order. In *Smith v. Allwright*, for example, the Supreme Court struck down the Texas Democratic Party’s requirement that all voters in its primary be White.⁴³ The Court held that “[b]y the terms of the Fifteenth Amendment [the right to vote] may not be abridged by any state on account of race,” and “[u]nder our Constitution the great privilege of the ballot may not be denied a [person] by the State because of [their] color.”⁴⁴ The ruling was a watershed moment because it recognized that political parties, though they are private associations, could not function as gatekeepers that perpetuate racial exclusion.⁴⁵

41. Inspired by the quote from Dr. Martin Luther King, “The arc of the moral universe is long, but it bends towards justice.” Dr. Martin Luther King, Jr., *Our God Is Marching On!* (Mar. 25, 1965) (transcript available at <https://kinginstitute.stanford.edu/our-god-marching> [<https://perma.cc/32R5-T6DJ>]).

42. *Presidential Proclamation—Martin Luther King, Jr., Federal Holiday, 2013*, WHITE HOUSE (Jan. 18, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/01/18/presidential-proclamation-martin-luther-king-jr-federal-holiday-2013> [<https://perma.cc/SRS7-5MKA>].

43. 321 U.S. 649, 665–66 (1944).

44. *Id.* at 662.

45. *See id.* at 664–66.

More than a decade later, in *Gomillion v. Lightfoot*, the Supreme Court struck down a racially motivated redistricting plan in Tuskegee, Alabama.⁴⁶ Litigants challenged the constitutionality of an act passed by the Alabama legislature that redrew the city's boundaries from a square into an irregular, 28-sided figure that excluded almost all of its Black residents while retaining White voters.⁴⁷ In a unanimous opinion by Justice Frankfurter, the Court held that states are not insulated from federal judicial review "when state power is used as an instrument for circumventing a federally protected right."⁴⁸ These decisions laid the groundwork for later rulings and legislative action, ensuring that the right to vote was not just a constitutional ideal but a living reality.

Landmark decisions by the Supreme Court were instrumental in cementing voting rights, but they were only one part of the story. Genuine progress demanded courageous decisions from the district courts where trial judges served as the frontline enforcers of constitutional rights and were confronted with the day-to-day realities of discrimination against Black voters. Judge Frank M. Johnson, Jr. was one of these judges who demonstrated a fearless commitment to justice.

As a judge in a state at the heart of the civil rights struggle during one of the most turbulent times in American history, Judge Johnson upheld his unwavering commitment to justice. He vigorously implemented the mandate of *Brown v. Board of Education*, which required the desegregation of public schools.⁴⁹

Judge Johnson knew what racial exclusion looked like: he was a White man who grew up in a segregated community.⁵⁰ His hometown was Haleyville, Alabama—a small town where racism and segregation were commonly accepted.⁵¹ Judge Johnson even attended law school with George C. Wallace—the infamous forty-fifth Governor of Alabama who staunchly supported Jim Crow laws and opposed desegregation.⁵²

But after serving in World War II, Judge Johnson returned to Alabama with a newfound sense of patriotism and a desire to be a voice for the voiceless.⁵³ He started to actively champion desegregation, standing out among other southern judges of his time for his unwavering commitment to constitutional equality.

He took the bench as a federal judge of the United States District Court for the Middle District of Alabama in 1955, the year after the Supreme Court's

46. 364 U.S. 339, 347–48 (1960).

47. *Id.* at 341.

48. *Id.* at 347.

49. *See* 347 U.S. 483, 493 (1954).

50. *See* Jack Bass, *Frank M. Johnson, Jr.*, ENCYC. OF ALA. (July 26, 2007), <https://encyclopediaofalabama.org/article/frank-m-johnson-jr/> [https://perma.cc/P8GB-SQ8N].

51. *Id.*

52. *See id.*

53. *See id.*

decision in *Brown*.⁵⁴ Judge Johnson made several groundbreaking decisions that overturned racial discrimination in voting and political participation. His rulings were instrumental in dismantling systemic barriers that prevented Black Americans from exercising their voting rights. He was particularly supportive of Dr. King and other civil rights leaders' efforts to challenge discriminatory laws, including racially discriminatory voting restrictions. Acknowledging Judge Johnson's dedication to equality, Dr. King even described Judge Johnson as "[t]he man that I know in the United States who gives true meaning to the word justice."⁵⁵

Just weeks after Judge Johnson took the judge's oath, Rosa Parks refused to give up her seat to a White man on a city bus in Montgomery, Alabama, in violation of a racially discriminatory city ordinance. The case challenging racial segregation on Montgomery's buses, *Browder v. Gayle*,⁵⁶ arrived in Judge Johnson's courtroom. In a three-judge panel, Judge Johnson joined Judge Richard Rives in ruling that there is "no rational basis upon which the separate but equal doctrine can be validly applied to public carrier transportation within the City of Montgomery."⁵⁷

Even when making transformative rulings, Judge Johnson saw himself as simply doing his job. Judge Johnson described his judicial philosophy by saying: "I wasn't hired to be a moral judge. I wasn't hired to be a preacher or an evangelist. I'm hired to apply the law."⁵⁸ Rather than be swayed by the political pressure of the times, Judge Johnson applied the law, even when it was deeply unpopular in his community.

Doing right by the law was not easy. After *Browder v. Gayle* and subsequent decisions ordering the desegregation of public schools and public accommodations, Judge Johnson received constant death threats and attacks. His former classmate, Alabama Governor Wallace demeaned him.⁵⁹ White students burned a cross on his lawn.⁶⁰ His mother's house was bombed, and he and his family were forced to live under federal protection for two decades.⁶¹ Despite threats to him and his family, Judge Johnson remained steadfast, "cautiously but unwaveringly adjudicating"⁶² and applying the law.

Judge Johnson firmly believed in the Constitution's promise of equality and justice for all Americans. He viewed the judiciary as holding a crucial role in

54. Frank M. Johnson, Jr., ACAD. ACHIEVEMENT, <https://achievement.org/achiever/frank-m-johnson/> [<https://perma.cc/DS7Y-3X6N>].

55. Ray Jenkin, *Often-Embattled Southern Judge Is Honored*, N.Y. TIMES, Apr. 21, 1975, at 20.

56. 142 F. Supp. 707 (M.D. Ala. 1956).

57. *Id.* at 717.

58. Franklin M. Johnson, Jr., *supra* note 54.

59. *Id.*

60. *Id.*

61. *Id.*

62. Frank M. Johnson, Jr., *The Role of the Judiciary with Respect to the Other Branches of Government*, 11 GA. L. REV. 455, 463 (1977).

guaranteeing that promise. He underscored that “[o]ne of the most important, if not the most important, duties of the courts is to secure the integrity of the relationship of private citizens to the government.”⁶³ And to that end, Judge Johnson believed that “a judge cannot discharge his oath of office without seeing to it that relief is provided.”⁶⁴

Among his notable contributions to the Civil Rights Movement was his transformative role in the fight for voting rights in Alabama. In 1961, Judge Johnson found that the state deliberately engaged in acts and practices designed to discriminate against Black citizens trying to register to vote.⁶⁵ He not only declared the practices unconstitutional but demanded that Alabama revise its voter registration procedures.⁶⁶ His ruling helped pave the way for broader voting rights enforcement that led to the Voting Rights Act of 1965. A few years later, he and Judge Rives ruled, as the majority in a three-judge district panel, that Alabama’s enforcement of a poll tax disenfranchised Black voters and violated the Constitution and the Voting Rights Act.⁶⁷ In his concurring opinion, Judge Johnson wrote that “voting is the most important means of participating in our democratic society [F]inancial ability has no place in a test of voting eligibility and is irrelevant to a determination of who is qualified to vote.”⁶⁸

Judge Johnson saw the courts as an essential check on the other branches of government. When government actions violate constitutional rights, the judiciary’s engagement “in the affairs of the legislative and executive branches of government result[s] not from an arrogation of power but from compliance with a constitutional mandate.”⁶⁹ In those circumstances, Judge Johnson stressed that the judiciary had not only the authority but the obligation to intervene. He warned that “[t]he courts possess only so much power as the other branches relinquish” when they fail to observe constitutional requirements.⁷⁰

His perception of the judiciary’s role is exemplified by one of his landmark rulings, *Williams v. Wallace*.⁷¹ When demonstrators planned to march from Selma to Montgomery to protest voter suppression, Judge Johnson recognized their constitutional right to assemble and demonstrate peacefully.⁷² After state troopers brutally attacked demonstrators in the prior peaceful protest on

63. Frank M. Johnson, Jr., *The Role of the Federal Courts in Institutional Litigation*, 32 ALA. L. REV. 271, 272 (1981).

64. *Id.* at 273.

65. *See* *United States v. Alabama*, 192 F. Supp. 677 (M.D. Ala. 1961).

66. *Id.* at 682.

67. *United States v. Alabama*, 252 F. Supp. 95, 104 (M.D. Ala. 1966).

68. *Id.* at 105, 108.

69. Johnson, *supra* note 62, at 465.

70. Frank M. Johnson, Jr., *In Defense of Judicial Activism*, 28 EMORY L.J. 901, 912 (1979).

71. *See* 240 F. Supp. 100 (M.D. Ala. 1965).

72. *Id.* at 106–07.

Selma's Edmund Pettus Bridge on "Bloody Sunday," Judge Johnson criticized state officials for "hav[ing] intimidated, threatened and coerced" Black citizens away from exercising their basic constitutional rights.⁷³ He ruled that the state could not interfere with the march but also granted the demonstrators' request for police protection for their planned march from Selma to Montgomery.⁷⁴

Judge Johnson also crafted innovative remedies to enforce civil rights. He indicated that traditional remedies, such as damages and prohibitory relief, "alone afford[] but a hollow protection to the basic and fundamental rights of citizens to equal protection of the law."⁷⁵ In *United States v. Penton*, Judge Johnson found that the state of Alabama had deliberately engaged in practices favoring White applicants and discriminating against Black applicants in the state's voter registration processes.⁷⁶ His order enjoined the state from continuing the discriminatory practices.⁷⁷ Further, he championed the "freezing principle," which directed that the lax standards previously used for White applicants be applied uniformly to all future applicants.⁷⁸ The principle was later adopted by the Fifth Circuit in other cases to prevent repeated violations of voting rights.⁷⁹ The freezing relief also became the precursor to the preclearance requirement in Section 5 of the Voting Rights Act of 1965, which provided that changes to voting regulations in covered jurisdictions had to be reviewed and approved by the Department of Justice or a federal court before implementation.⁸⁰ Judge Johnson consistently prioritized constitutional protections over racial prejudices, recognizing the law's power for social justice.

Judge Johnson's role in defining voting rights was transformative during the Civil Rights Era. But his influence extended beyond his time. The judiciary continues to hold the responsibility for protecting voting rights.

IV. THE MODERN BATTLE FOR VOTING RIGHTS AND THE JUDICIARY'S ONGOING ROLE

The battle for voting rights is far from over, and courts remain a critical actor in protecting the right to vote and other civil rights in our country. Election litigation in recent years has raised questions regarding redistricting

73. *Id.* at 105.

74. *Id.* at 110.

75. Johnson, *supra* note 62, at 471.

76. 212 F. Supp. 193, 200 (M.D. Ala. 1962).

77. *Id.* at 200–01.

78. See Michael Dowling, Note, *The Freezing Concept and Voter Qualification*, 16 HASTINGS L.J. 440, 442 (1965).

79. Ronald J. Krotoszynski, Jr., *Equal Justice Under Law: The Jurisprudential Legacy of Judge Frank M. Johnson, Jr.*, 109 YALE L.J. 1237, 1244–45 (2000); see, e.g., *United States v. Duke*, 332 F.2d 759, 768–70 (5th Cir. 1964) (ordering the Panola County registrar to apply to Negroes eligible to vote before 1962 the same standards as were actually applied to Whites during the discriminatory period).

80. See generally Voting Rights Act of 1965, Pub. L. 89-110, § 5, 79 Stat. 437, 439.

maps, racial gerrymandering, and voting restrictions. For example, in 2023, the Eighth Circuit ruled that Section 2 of the Voting Rights Act does not confer a private right of action.⁸¹ And the Fifth Circuit recently ruled that minority coalitions cannot bring vote dilution claims under the Voting Rights Act, rejecting a challenge to the county commissioner's map in Galveston County, Texas.⁸² Moreover, during its last term, the Supreme Court held that when district lines could be explained by a legislature looking to either race or voters' preferred party, federal courts should usually assume that the legislature tried to achieve partisan, not racial, goals.⁸³ These cases reflect the broad national concern with protecting voter rights and ensuring the integrity of elections. Some of these cases revisit long-standing questions about voter rights. Others raise new questions that reflect changing or emerging election practices. The judiciary will continue to play a critical role in safeguarding the right to vote.

CONCLUSION

During pivotal moments in history, our nation's laws have ensured that every citizen has a voice in our democracy, and the judiciary has upheld this right. Judge Johnson demonstrated that judges have a powerful role in protecting constitutional principles. And while I emphasize Judge Johnson's role in voting rights litigation, he also had many other groundbreaking accomplishments that strengthened civil rights in the United States. His key decisions strengthened the desegregation of public spaces and transportation systems,⁸⁴ integration of public schools,⁸⁵ fair hiring practices in government and the private sector,⁸⁶ criminal justice reforms,⁸⁷ and the right to peaceful assembly.⁸⁸ Judge Johnson consistently held that the law did not permit discrimination based on race, interpreting the laws before him in the context of the Constitution. Notably, he did so irrespective of the civil unrest that threatened his life and the lives of his family. Though tested, Judge Johnson acted with courage and conviction when making unpopular decisions, steadfast in his role as an independent decisionmaker in the federal judiciary.

81. Ark. State Conf. NAACP v. Ark. Bd. of Apportionment, 86 F.4th 1204, 1209–18 (8th Cir. 2023).

82. Petteway v. Galveston County, 111 F.4th 596, 603 (5th Cir. 2024).

83. Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 9–10 (2024).

84. See Browder v. Gayle, 142 F. Supp. 707, 717 (M.D. Ala. 1956) (ruling that segregation on Montgomery's public buses was unconstitutional).

85. See Lee v. Macon Cnty. Bd. of Educ., 231 F. Supp. 743, 753 (M.D. Ala. 1964) (ordering the desegregation of Alabama's public schools, enforcing the Supreme Court's decision in *Brown*).

86. See NAACP v. Allen, 340 F. Supp. 703, 705–07 (M.D. Ala. 1972) (finding racial discrimination in the hiring of state police personnel and granting prohibitory injunctive relief).

87. See Newman v. Alabama, 349 F. Supp. 278, 281 (M.D. Ala. 1972), *vacated in part*, 522 F.2d 71 (5th Cir. 1975) (finding that the medical care provided to inmates in Alabama's prisons was grossly inadequate, constituting cruel and unusual punishment).

88. See Williams v. Wallace, 240 F. Supp. 100, 110 (M.D. Ala. 1965) (ordering that the state could not interfere with the Selma march and granting the police protection to marchers).

Very deservedly, Judge Johnson received the Presidential Medal of Freedom in 1995 and has been recognized by numerous civil rights organizations for his judicial courage and commitment to equality during one of the most challenging periods of American civil rights history.⁸⁹ He showed that individual moral courage could help challenge systemic racial discrimination and transform a society's fundamental structures of inequality. Throughout his life and judicial career, Judge Johnson exemplified the remarkable role that judges play in our constitutional order: to be neutral arbiters of the law and uphold equal justice under the law. In the words of Judge Johnson, "Courts do not relish making such hard decisions and certainly do not encourage litigation on social or political problems. But, I repeat, the federal judiciary in this country has the paramount and the continuing duty *to uphold the law*."⁹⁰

Thank you, and enjoy the fellowship at this wonderful event celebrating the Honorable Frank M. Johnson, Jr.

89. Robert D. McFadden, *Frank M. Johnson Jr., Judge Whose Rulings Helped Desegregate the South, Dies at 80*, N.Y. TIMES (July 24, 1999), <https://www.nytimes.com/1999/07/24/us/frank-m-johnson-jr-judge-whose-rulings-helped-desegregate-the-south-dies-at-80.html> [<https://perma.cc/4ZRY-JJYK>].

90. Johnson, *supra* note 62, at 474 (emphasis added).