

# Debating the Civil Rights Act of 1875

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Less than 10 years after slavery was declared unconstitutional, a black Congressman and the former vice president of the Confederate States of America squared off in the House of Representatives to contest wildly different post-war agendas. Their debate, and the piece of legislation in question, as well as the American public's response, reveal the extent to which deep-seated racial prejudice obstructed civil rights advances in the post-Civil War Reconstruction era.

Despite the many shortcomings of Reconstruction, the era produced a long record of legislation that aimed to expand and protect the civil rights of the newly freed black population. The Freedmen's Bureau Act, the Civil Rights Act of 1866, the three Reconstruction Acts, as well as the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution all sought to better integrate the millions of new citizens into American society on the basis of equal citizenship.<sup>1</sup> Another piece of such legislation was the Civil Rights Act of 1875. This radical act represented the Republican reformers' goals for the period and asserted:

That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.<sup>2</sup>

However, the Act's ambitions were controversial from the start and its lifespan proved to be short. On October 15, 1883, the Civil Rights Act of 1875

was declared unconstitutional by the Supreme Court in its ruling on the Civil Rights Cases. By looking at the lifecycle of this piece of legislation, we see some of the greatest conundrums of Reconstruction, the competing interests, and the participation of Americans in shaping this important period as they debated what it meant to be an American citizen.

On the very first day of the 43rd Congress of the United States, December 1, 1873, Senator Charles Sumner submitted his proposal for an extension of the Civil Rights Act of 1866—its contents would eventually become the basis of the Civil Rights Act of 1875.<sup>3</sup> The first form of this bill was submitted in 1870, but languished in the House for a few years; however, in the coming weeks it found new life.<sup>4</sup> Sumner's proposed bill received support from some of his Republican colleagues, especially Benjamin Butler, chair of the House Judiciary Committee, who submitted a similar bill to the House.<sup>5</sup> As the bill gained support from Republicans, it seemed it was gaining opposition in equal measure from Democrats. Equipped with master orators, the Democrats voiced dissent on the House Floor, with few white Republicans ready with retorts.<sup>6</sup> It was, "the black Representatives [who] carried the debate on the measure throughout the 43rd Congress by making some of their most famous and impassioned speeches. The record-breaking seven

black men on the House Floor was, in itself, an argument in favor of the bill."<sup>7</sup> This debate between black congressmen and white Democratic representatives—some of whom were pardoned Confederates—attests to the advances made by previous Reconstruction legislation. Just a few years before, these African American congressmen would not have been free and able to confront the white congressmen in the legislature to advocate for their equality.

On January 5, 1875, Democrat Alexander Stephens, a white representative from Georgia, delivered a much anticipated speech about his disapproval of the proposed civil rights legislation, in which he claimed his African American constituents did not want the rights outlined in the bill. According to the *Daily Chronicle & Sentinel*, he stated:

In point of fact, I do not believe the colored people of Georgia have any desire for mixed schools, and very little, indeed, for mixed churches, as contemplated by this measure...They have no desire for anything partaking of the character of social rights; and if the people, colored and white, in the several Southern States, shall be left to themselves to work out their own destiny under the present system, subject alone to the controlling law of Justice, as before stated, without external interference of any sort, it will, in my judgement, be infinitely better for both races.<sup>8</sup>

While many people will see this speech as presumptuous and misinformed, it becomes even more shocking

when one considers that 10 years earlier Representative Stephens had been vice president of the Confederate States of America (CSA) in Richmond, Virginia.

Should the former vice president of the CSA be relied on to define U.S. citizenship rights? Should he have been allowed to hold congressional office? Such is the murkiness of Reconstruction. Moments after Stephens's speech, Democratic Rep. John T. Harris of Virginia made his case on the bill, but then added, "I defy any man to say that the black man is the equal of the white man."<sup>9</sup> This comment was met with objection from African American Representative Alonzo J. Ransier of South Carolina, who sat just across the aisle from him. Harris's response?: "You sit down, Sir; I am talking to white men and gentlemen, and not you."<sup>10</sup>

In effect, despite gaining representation in Congress and protection by the law, African Americans were continually suppressed by their white counterparts. The day after Stephens's speech and the altercation between Harris and Ransier, a young African American man named Robert Elliott, a Republican Representative from South Carolina, detailed his support for the bill and identified the shortcomings of the argument that equal rights may be denied on the basis of states' rights. Near the conclusion of his speech, he directly addressed Stephens:

Sir, it is scarcely twelve years since that gentleman shocked the civilized world by announcing the birth of a government which rested on human slavery as its corner-stone. The progress of events has swept away that *pseudo*-government which rested on greed, pride, and tyranny; and the race whom he then ruthlessly spurned and trampled on are here to meet him in debate, and to demand that the rights which are enjoyed by their former oppressors—who vainly sought to overthrow a Government

which they could not prostitute to the base uses of slavery—shall be accorded to those who even in the darkness of slavery kept their allegiance true to freedom and the Union.<sup>11</sup>

News of this debate reached constituents throughout the country. African Americans organized to express support for the bill and submitted a petition to Congress on January 26, 1874. A group of 11,000 African American citizens gathered in Atlanta to validate Representative Elliott's speech, and implore Congress to

[S]peedily pass the Civil Rights Bill, now under consideration in Congress, as the earnest request of the above stated citizens; with further request that your honorable bodies will, in view of the unjust manner in which we are now treated by the Legislature and judicial tribunals in this State, enact such laws as ... are necessary to secure each citizen in the United States, without regard to race, color, or previous condition of servitude, equal, civil and political rights, privileges and immunities before the law.<sup>12</sup>

On February 3, Senator James Flanagan of Texas presented the petition to the Senate.<sup>13</sup> The petitioners' efforts were rewarded when Sumner's bill became law on March 1, 1875. Many factors contributed to the bill's passage, but black citizens' participation in the debate is noteworthy given that they had been historically denied the social and political means to advocate for their rights. They joined a post-Civil War tradition of black citizens openly wielding their rights to challenge white hegemony and to create a more inclusive country.

With the legislation in place, African American citizens now had the backing of the federal government to assert the right to equal access to public accommodations. In *United States v. Newcomer*,

Reverend Fields Cook invoked the power of the Civil Rights Act of 1875 to take hotel clerk Upton Newcomer to court. Cook had traveled from Alexandria, Virginia, to Philadelphia to attend a religious convention in 1876. Newcomer had denied him a room and forced him to sleep in the lobby. The jury found Newcomer guilty and the judge imposed a hefty fine.

Court cases began springing up around the country, but not all cases were as successful. One of the main issues was that the federal courts did not exactly know how to interpret the Civil Rights Act of 1875. For instance, when Murray Stanley was taken to court for refusing dining services to Bird Gee because of his race, the federal district court could not come to a consensus on how to implement the precedents set forth by the Act. Therefore, they filed a certificate of division for the *United States v. Stanley* case, which sent it to the Supreme Court for review. Eventually, the case was combined with four others that dealt with private businesses or employees infringing on the rights of African American citizens. The Civil Rights Cases waited for years to be heard; the Supreme Court finally debated and came to a ruling in 1883.<sup>14</sup>

In an eight to one vote, the Supreme Court declared the Civil Rights Act of 1875 unconstitutional on October 15, 1883. In the Court's opinion, Chief Justice Joseph Bradley wrote,

On the whole, we are of the opinion that no countenance of authority for the passage of the law in question can be found in either the Thirteenth or Fourteenth Amendment of the Constitution, and no other ground of authority for its passage being suggested, it must be declared void, at least so far as its operation in the several States is concerned.<sup>15</sup>

In the lone dissent, Justice John Harlan stated,

## IN THE SENATE OF THE UNITED STATES.

DECEMBER 1, 1923.

Mr. REEDER asked and, by unanimous consent, obtained leave to bring in the following bill, which was read twice and referred to be printed.

## A BILL

Supplementary to an act entitled "An act to protect all citizens of the United States in their civil rights, and to furnish the means for their vindication," passed April ninth, eighteen hundred and sixty-six.

- 1 *Be it enacted by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That no citizen of the United States shall, by reason of race,
- 4 color, or previous condition of servitude, be exempted or ex-
- 5 cluded from the full and equal enjoyment of any accommo-
- 6 dation, advantage, facility, or privilege furnished by inn-keepers;
- 7 by common carriers, whether on land or water; by licensed
- 8 carriers, managers, or lessees of theaters or other places of
- 9 public amusement; by trustees, commissioners, superintend-
- 10 ents, teachers, and other officers of common schools and
- 11 public institutions of learning, the same being supported by
- 12 moneys derived from general taxation or authorized by law;
- 13 also of cemetery associations and benevolent associations sup-

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- 14 ported or authorized in the same way: *Provided,* That
- 15 private schools, academies, and institutions of learning estab-
- 16 lished exclusively for white or colored persons, and maintained
- 17 respectively by voluntary contributions, shall remain according
- 18 to the terms of the original establishment.

- 1 *Sec. 2.* That any person violating any of the provisions
- 2 of the foregoing section, or aiding in their violation, or
- 3 inciting thereto, shall, for every such offense, forfeit and pay
- 4 the sum of five hundred dollars to the person aggrieved
- 5 thereby, to be recovered in an action on the case, with full
- 6 costs, and shall also, for every such offense, be deemed guilty
- 7 of a misdemeanor, and, upon conviction thereof, shall be fined
- 8 not less than five hundred nor more than one thousand dol-
- 9 lars, or shall be imprisoned not less than thirty days nor more
- 10 than one year: *Provided,* That the party aggrieved shall not
- 11 recover more than one penalty; and when the offense is a
- 12 refusal of hotel, the penalty may be recovered by the hotel-
- 13 at law of the person whose body has been refused hotel.

- 1 *Sec. 3.* That the same jurisdiction and powers are hereby
- 2 conferred and the same duties enjoined upon the courts and
- 3 officers of the United States in the execution of this act as are
- 4 conferred and enjoined upon such courts and officers in sections
- 5 three, four, five, seven, and ten of an act entitled "An act to
- 6 protect all persons in the United States in their civil rights,
- 7 and to furnish the means of their vindication," passed April

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- 8 ninth, eighteen hundred and sixty-six, and these sections are
- 9 hereby made a part of this act; and any of the aforesaid
- 10 officers failing to institute and prosecute such proceedings
- 11 herein required shall, for every such offense, forfeit and pay
- 12 the sum of five hundred dollars to the person aggrieved
- 13 thereby, to be recovered by an action on the case, with full
- 14 costs, and shall, on conviction thereof, be deemed guilty of a
- 15 misdemeanor, and be fined not less than one thousand dollars
- 16 nor more than five thousand dollars.

- 1 *Sec. 4.* That no citizen possessing all other qualifications
- 2 which are or may be prescribed by law shall be disqualified
- 3 for service as juror in any court, tribunal or State, by reason
- 4 of race, color, or previous condition of servitude; and any
- 5 officer or other persons charged with any duty in the selection
- 6 or summoning of jurors who shall exclude or fail to summon
- 7 any citizen for the reasons above named shall, on conviction
- 8 thereof, be deemed guilty of a misdemeanor and be fined not
- 9 less than one thousand dollars nor more than five thousand
- 10 dollars.

- 1 *Sec. 5.* That every discrimination against any citizen
- 2 on account of color by the use of the word "white," or any
- 3 other term in any law, statute, ordinance, or regulation,
- 4 national or State, is hereby repealed and annulled.

It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the State, or its officers, or by individuals or corporations exercising public functions or authority, against any citizen because of his race or previous condition of servitude.

With federal troops removed from the South in 1877, the Civil Rights Act of 1875 was one of the only remnants of the protections black citizens obtained

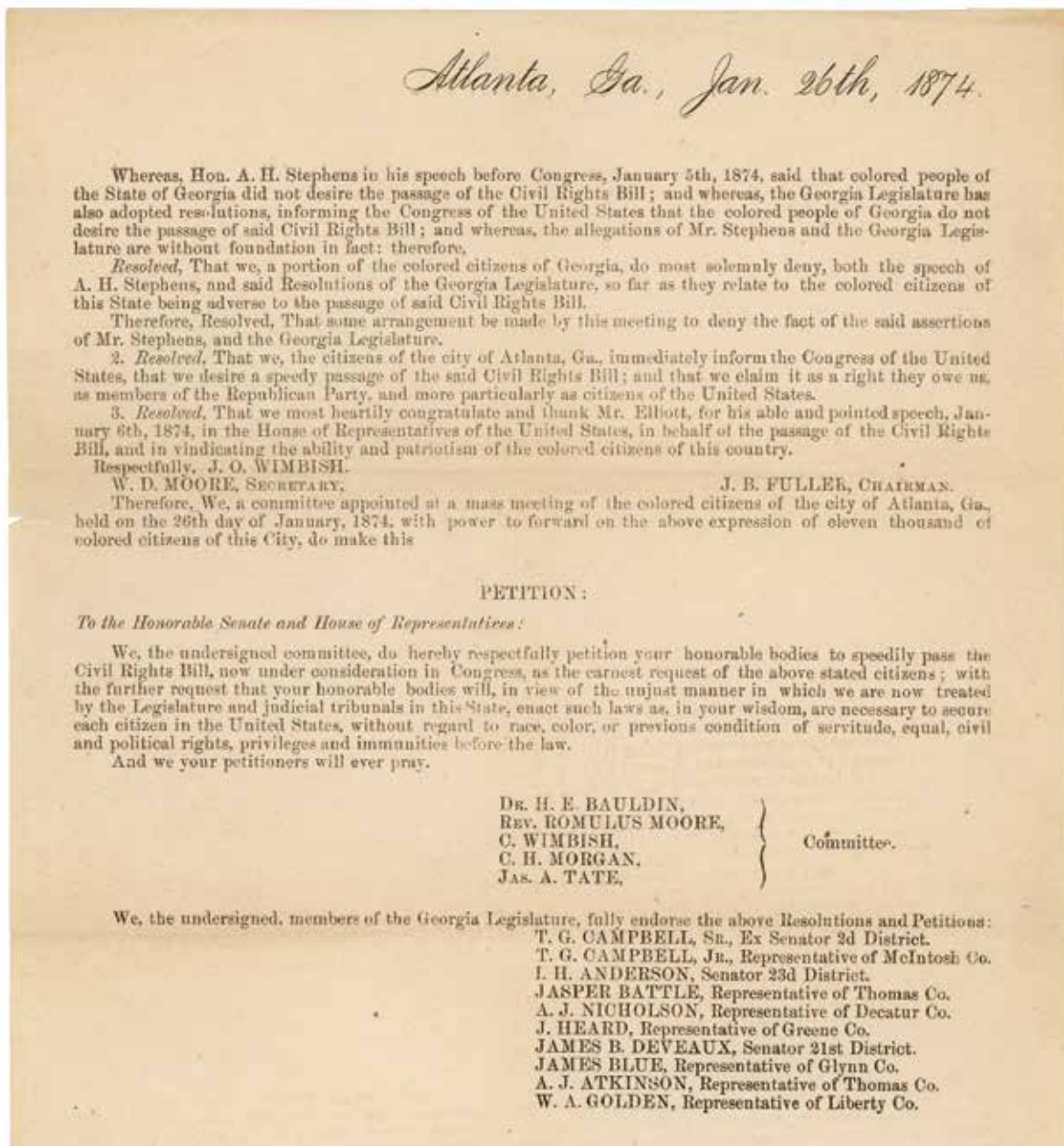
during Reconstruction; the Supreme Court's decision in 1883 further reduced the gains made.

Although the failures of the era had real and severe consequences for African Americans, they were never an inevitable fate. By studying episodes and socio-political battles of Reconstruction like this one, students of history can get a better idea of how this period unfolded. The progress of social justice and civil rights was not linear, but was determined by individuals and groups who advanced these rights along

a complex and crooked trajectory.<sup>17</sup>

**Notes**

1. F.L. Carr, "A Timeline of Reconstruction: 1865-1877," *George Mason University* (June 23, 1998), <http://chnm.gmu.edu/courses/122/recon/chron.html>. This source provides a terrific timeline of Reconstruction.
2. U.S. Congress, "An Act to Protect All Citizens in their Civil and Legal Rights," Statutes at Large. 43rd Congress, 2nd Session, Volume 18, Part 3. 1 March 1875. From Library of Congress, A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875, at <https://memory.loc.gov>. Pages 335-337 of this document provides the entire text for the Civil Rights Act of 1875.
3. "Black Americans in Congress: Legislative Interests,"



Atlanta Petition: <https://www.docsteach.org/documents/document/memorial-of-the-colored-people-of-georgia-in-favor-of-the-sumner-civil-rights-bill>



*History, Art & Archives, United States House of Representatives*, <http://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Fifteenth-Amendment/Legislative-Interests/>.

4. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, Publishers, 1988): 532.
  5. "Black Americans in Congress: Legislative Interests." A copy of Sumner's original 1873 proposal is available on the National Archive's website, DocsTeach. Sumner Civil Rights Bill; 12/1/1873; Records of the U.S. House of Representatives, Record Group 233 (Online Version, [www.docsteach.org/documents/document/sumner-civil-rights-bill](http://www.docsteach.org/documents/document/sumner-civil-rights-bill), August 14, 2017).
  6. "Black Americans in Congress: Legislative Interests."
  7. Ibid.
  8. "Speech for Hon. Alexander H. Stephens of Georgia," *Daily Chronicle & Sentinel* (Jan. 9, 1874).
  9. "Congress. Debate of the Civil Rights Bill. The Controversy Between the Democrats and the Colored Men—Argument of Alexander H. Stephens," *The New York Times* (Jan. 6, 1874).
  10. Ibid.
  11. Elliott, Robert, Speech on Floor of United States House of Representatives (Jan. 6, 1874), *Neglected Voices: Speeches of African-American Representa-*
- tives Addressing the Civil Rights Bill of 1875*, [www.law.nyu.edu/sites/default/files/civilrightsactspeeches.pdf](http://www.law.nyu.edu/sites/default/files/civilrightsactspeeches.pdf).
  12. A copy of the original petition is available on the National Archive's website, DocsTeach. Memorial of the Colored People of Georgia in Favor of the Sumner Civil Rights Bill; 1/26/1874; Records of the U.S. House of Representatives, Record Group 233. (Online Version, [www.docsteach.org/documents/document/memorial-of-the-colored-people-of-georgia-in-favor-of-the-sumner-civil-rights-bill](http://www.docsteach.org/documents/document/memorial-of-the-colored-people-of-georgia-in-favor-of-the-sumner-civil-rights-bill), August 14, 2017).
  13. "Congressional," *Daily Chronicle & Sentinel* (Feb. 4, 1874).
  14. The other four court cases in the Civil Rights Cases were *United States v. Ryan*, *United States v. Nichols*, *United States v. Singleton*, and *Robinson and wife v. Memphis & Charleston R.R. Co.*
  15. "Civil Rights Cases," *Legal Information Institute*, [www.law.cornell.edu/supreme/court/text/109/3#writing-USSC\\_CR\\_0109\\_0003\\_ZD](http://www.law.cornell.edu/supreme/court/text/109/3#writing-USSC_CR_0109_0003_ZD).
  16. Rosen, Hannah, "Teaching Race and Reconstruction," *Journal of the Civil War* 7, no. 1 (2017): 67–95. doi: <https://doi.org/10.1353/cwe.2017.0013>. This is an incredible source for those teaching Reconstruction. In the first portion of the article, Rosen discusses why it is imperative to teach

Reconstruction from an analytical and nuanced perspective. She then outlines how she teaches the subject in her college courses, shedding light on some of the more complicated topics within the era. Geoff Eley's, *A Crooked Line: From Cultural History to the History of Society*, provides a great theoretical framework for how we think about and study the unfolding of history.

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## Teaching Activities

### Civil Rights Act of 1875 Debate Simulation

- First, have students read Sumner's Civil Rights proposal from 1873. Then break the class up into groups that represent the different political party allegiances and agendas of the Congress that first debated Sumner's proposal. Have them debate the bill according to their assigned positions. There will be a final vote on the bill at the end of the debate to determine the fate of the bill.

### Cartoon

- Have students read the "Memorial of the Colored People of Georgia in Favor of the Sumner Civil Rights Bill" petition and create a comic strip—this should be a page of cartoon panels—that illustrates the events, people, and legislation described in the document. Because the document offers such rich perspective and imagery, a cartoon strip allows for students to synthesize the event in narrative and visual form.

### Newspaper Articles

- Have students read Sumner's bill proposal and the "Memorial of the Colored People of Georgia in Favor of the Sumner Civil Rights Bill" petition. Then have them write two news articles reporting and reacting to the petition: one from the perspective of a supportive newspaper and another from the perspective of a critical newspaper. Each article should contain at least three

quotations—a combination from the two documents—to which the journalist should react. Students can use different quotes for each article or the same three, which may make it interesting to see how each perspective treats the same quotes differently.



For a more detailed description of each of the groups involved in the debate, as well as other specifics for the activity, please listen to the podcast at the NCSS webpage: [www.socialstudies.org/publications/podcast-collection](http://www.socialstudies.org/publications/podcast-collection).

For other activities based on these documents and others from Reconstruction, please see the the National Archives' website, DocsTeach: [www.docsteach.org/](http://www.docsteach.org/).