



By Robert A. Kutcher

If at First You Don't Succeed...

This year marks the 100th anniversary of the passage of the 19th Amendment. Lest you be kept in suspense, the 19th Amendment states:

The right of citizens of the United States to vote shall not be denied or abridged . . . on account of sex

In other words, 100 years ago, this country experienced the largest single increase in eligible voters in history. Those simple words made eligible more than 26 million voters in a country which had a total population — men, women and children — of just more than 100 million. By sheer numbers, that significantly exceeds the potential number of eligible voters added pursuant to the 1965 Voting Rights Act.

The 19th Amendment was not an overnight success. Indeed, its genesis began more than 70 years earlier at the Seneca Falls Convention in 1848. Although women had voting rights in some pre-revolution colonies, any voting rights for women were eliminated soon after passage of the Constitution. That deficiency was not remedied for a century. Although some states, mainly in the west, granted suffrage, it was far from universal and far from popular.

At the Seneca Falls Convention, led by Elizabeth Cady Stanton and Lucretia Mott, a “Declaration of Sentiments” modeled after the Declaration of Independence was adopted by 68 women and 32 men. The 20 declarations included statements about voting, marriage and lack of education. In a country that is today majority female, and with

a Congress that is almost 25% percent female and with a female Speaker of the House, it is hard to fathom how this was an issue, but it most assuredly was. The road to suffrage was long and arduous. There were several court fights, including the argument that the 14th and 15th Amendments granted universal suffrage. All these lawsuits were unsuccessful. The first of many federal amendments was introduced in 1878. It was rejected.

These efforts continued through the end of the 19th century. The suffrage movement was not monolithic. There was a split between the white and African-American suffrage movements. There was picketing at the White House. These “Silent Sentinels” demonstrated for more than two years. There was imprisonment. At the outset of World War I, only eight states had granted women the right to vote. Although the Bull Moose Party of Teddy Roosevelt adopted a constitutional amendment as a plank in 1912, much of the momentum came from World War I. It was not until 1918 that President Wilson supported suffrage, but congressional support was not widespread. Finally, after at least five failed attempts, in 1919, the 19th Amendment was passed by Congress by the legally required two-thirds vote. Next came state ratification.

There was strong opposition in many quarters, much of it from the South, which rejected the amendment. The articulated basis for opposition was that voting was a states’ rights issue, not a federal issue. Ratification was defeated in many southern states, including Louisiana. In August 1920, that ratification came when Tennessee voted to approve by the narrowest of margins. Fifty

of the 99 members of the Legislature voted in favor. One of the legislators voted to support only when pressure was applied by his mother. It was certainly a close call.

It is an interesting footnote to history that our state did not formally adopt the 19th Amendment until 1970, some 50 years after its passage.

Of course, the struggle did not end. In many ways, the suffrage movement was the forerunner of all the equality movements since. Many employed the same practices. Just as state legislators in recent times have absented themselves from the state to deny a quorum, Tennessee legislators attempted the same tactic.

Ours is a much different world than the one which existed over a century ago, but it is important to remember that, as the battle for equal rights rages on today, that, at one point, you or your mother or wife or sisters did not have the right to vote.

We will be displaying a visual program of the 19th Amendment at our Annual Meeting in Destin, Fla., in June. I urge you to attend and see history for yourself.

Unfortunately, the “equality” espoused in the Declaration of Independence and the Declaration of Sentiments continues to be an aspirational goal, not an achievement. Since the passage of the 19th Amendment, we have had the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Neither came without a struggle or without political cost. For those of us old enough to remember, the 1960s were a difficult time in this country, but those fundamental freedom and “equality”

acts were enacted, despite loud and vocal opposition. It's not always easy to be on the right side of history.

It was less than 50 years from the Stonewall riot to the 2015 Supreme Court decision in *Obergefell v. Hodges*, which found same-sex marriage constitutional, but just as with women's suffrage and the Voting Rights Act, the recent and

relatively swift acknowledgement of the constitutionality of same-sex marriage is not without its opposition nor will the coming fight over the Equal Rights Amendment be without controversy.

Ours is an evolving and ever changing society. What was once acceptable and legal is no longer the case. As lawyers, it is our collective obligation to up-

hold and honor the law or support a good faith modification, reversal or extension of the law. That is our sworn duty. So, in celebrating the 100th anniversary of the adoption of the 19th Amendment, let us all commit to the concept that all men and women are created equal.

