**Racial Equality and the Constitution**

August 20, 2015

Georgia Tea Party event with Dr. Alveda King.

Our Constitution is an amazing document. It secures individual liberty in a workable, limited government that is representative in nature. It also protects fundamental rights through its first 10 amendments, the Bill of Rights, and in several amendments that follow.

The First Freedom, religious freedom, is one of the reasons we are here today. And I want to thank Dr. Alveda King for her support of the Religious Freedom Restoration Act, which we need to pass in the Georgia General Assembly next year. Georgia Tea Party endorsed this legislation last November. It will enhance the free exercise of religious freedom in our state.

But let’s pause a moment and talk about the rights that were NOT secured until long after our Constitution was drafted—rights associated with racial equality.

While the Constitution does contain biblical principles that have allowed it to endure these many years, the concept that all men are created equal was not a principle secured in the original document. The Constitution drafted in 1787 allowed the trade in black slaves to continue, but cut off the importation of slaves in 1808. This was a political compromise by the delegates to ensure that Southern states would not leave the Union. Some of them knew that later generations would have to struggle with this issue. They kicked the can down the road.

The other error in the original Constitution was the “Three-fifths Rule.” The rule limited the representation of Southern states in the House of Representatives by counting black slaves as 3/5 of a person. While some may view this as diminishing the worth of black slaves as people—which it did in terms of calculating representation—it was actually a compromise that included accounting for direct taxation if a national tax was levied. While it helped the North, by having fewer Southern congressmen in the House, it also would have helped the South if any kind of proportional tax had been levied on the states.

Before the 16th Amendment, which gave us the income tax, any national tax would have had to have been based on population. So the Three-fifths Compromise was seen by Southerners as beneficial to them in terms of lower taxes.

Abolitionist Frederick Douglass understood the Three-fifths Compromise, saying that the Three-fifths Clause was "a downright disability laid upon the slaveholding states" that deprived them of "two-fifths of their natural basis of representation." He also said, “…the Constitution encourages freedom by holding out to every slaveholding state the inducement of an increase of two-fifths of political power by becoming a free state.”

The Three-fifths Clause was a tool to prevent the slaveholding South from gaining an advantage in Congress and further perpetuating the institution of slavery.

After the Civil War, Congress proposed and the states ratified three “Civil War amendments”:

13th Amendment – abolished slavery in the United States

14th Amendment – recognized and defined the rights of citizenship for former slaves

15th Amendment – secured voting rights for those who had been slaves

The 15th said the right of citizens to vote “shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”

Yet, rulings in the U.S. Supreme Court did not uphold the rights associated with these amendments until nearly 90 years later. That is because no matter how good your Constitution is, if those who swear to uphold and defend it fail to do so, words on paper can be ignored. Due to weak character and a failure of personal ethics, many who were in public office failed to act to secure these rights.

In 1871, the Ku Klux Klan Act was passed by Congress. It made private criminal acts federal crimes, and President Ulysses S. Grant used the law to authorize the use of federal troops against the Klan.

In 1873, in a dispute over a contested election for Governor in Louisiana, the White League, a racist group, shot and killed 100 black state militia members in the Colfax Massacre. The 97 White League members charged with the crimes were eventually released and paid no penalty. In a U.S. Supreme Court case arising from this event, United States v. Cruikshank, in 1876, the court ruled that the federal government had no jurisdiction in the matter, as the crime involved private parties, not the state depriving anyone of their rights. The court ignored the Ku Klux Klan Act. The justices parsed their words and ignored the great issue before them—in violation of their oaths of office.

And then there was Plessy v. Ferguson in 1896, which established the doctrine of “separate but equal” facilities for blacks and whites. But even in this dark hour, there was a voice of reason that pointed to the truth.

Justice John Marshall Harlan dissented. He wrote in his dissent:

“… in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. … 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.”

Unfortunately, Justice Harlan was in the minority, and it would not be until Brown v. Board of Education in 1954 that “separate but equal”—which the court said was NOT equal—was overturned. But it WAS overturned, and voting rights and other civil rights for black Americans were finally secured in U.S. law during the Civil Rights era of the 1960s. And there was a vigorous effort to enforce these new laws. Of course, that doesn’t mean everything is perfect today, and we must still continue to stand up and fight for racial equality.

But most importantly, we finally did get it right—in the Constitution and in the laws of our land. We need to continue to fine-tune the laws to secure the fundamental rights of all Americans, and ensure that the laws are faithfully executed—ALL of the laws, not just those someone chooses to enforce.