

WRINGING RIGHTS OUT OF THE MOUNTAINS:
COLORADO'S CENTENNIAL CONSTITUTION AND THE
AMBIVALENT PROMISE OF HUMAN RIGHTS AND
SOCIAL EQUALITY

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On February 28, 1861, the United States Congress created the Territory of Colorado.¹ As one of the last states to be organized into a territory prior to the Civil War,² Colorado's petition for statehood would play an instrumental role in bringing the Civil War and its Reconstruction era of hostilities to a psychological end.³ Recognizing that the 1876 national presidential election between Rutherford B. Hayes and Samuel Tilden would be close, national Republican leaders pushed through a proposal for Colorado statehood in 1875.⁴ Critically, without Colorado's three electoral votes, Republican Rutherford B. Hayes may not have become President of the United States.⁵ Severely weakened by the election

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¹ Act of Feb. 28, 1861, ch. 59, 12 Stat. 172.

² Congress created the Nevada Territory and the Dakota Territory days later on March 2, 1861. See Act of Mar. 2, 1861, ch. 83, 12 Stat. 209 (Nevada); Act of Mar. 2, 1861, ch. 86, 12 Stat. 239 (Dakota).

³ The period following the Civil War, known as Reconstruction, is perhaps one of the most contentious and troublesome eras in American history. As federal administrative, political, and military forces attempted to reshape Southern society while bringing its citizenry back into the national fold, Southern "redeemers" resisted at almost every turn, and in often violent and extralegal ways, thwarted efforts to reconstruct Southern society along more egalitarian and industrial lines. See ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, at 587-601 (Perennial Classics 2002) (1988).

⁴ ROBERT G. ATHEARN, THE COLORADANS 102 (1976); see also Colin B. Goodykoontz, *Some Controversial Questions Before the Colorado Constitutional Convention of 1876*, 17 COLO. MAG. 1, 2, 4 (1940) (discussing the role of party politics at the Colorado Constitutional Convention of 1876); Donald Wayne Hensel, *A History of the Colorado Constitution in the Nineteenth Century* 82-83 (1957) (unpublished Ph.D. thesis, University of Colorado) (on file with author) (describing the circumstances under which congressional Republicans passed the bill granting Colorado statehood).

⁵ ATHEARN, *supra* note 4, at 102; see also KEITH IAN POLAKOFF, THE POLITICS OF INERTIA: THE ELECTION OF 1876 AND THE END OF RECONSTRUCTION 149-50 (1973) (providing background on Colorado's support for Hayes). As Professors Dale Oesterle and Richard Collins point out, "the 1874 election of a Democratic delegate from the Colorado Territory to

controversy, Hayes and Republican leaders negotiated the Compromise of 1877.⁶ The Compromise, which removed the remaining federal soldiers stationed in the South, ensured that the promise of equal rights and legal protections found in the recent amendments to the Federal Constitution on behalf of the nation's Southern black citizenry would be drastically restricted and largely ignored.⁷

During this formidable period, Coloradans, like their national counterparts, were deeply divided along regional lines. In the rural southern expanses of the territory lived a Catholic, Spanish-speaking population, while Anglo migrants from states such as Illinois, Pennsylvania, and Missouri and the countries of Canada, Ireland, and Germany settled in the urban and increasingly industrial sectors in the northern half of the state.⁸ The tone of this regional split was reflected in the state's territorial jurisprudence. In 1868, for instance, the Territorial Supreme Court of Colorado objected to the use of Spanish in the Territory's courtrooms.⁹ According to the court, "the Spanish language . . . is not to be tolerated in this country."¹⁰ The court accordingly expressed shock "that judicial proceedings should be in any other than the adopted

Congress, Thomas Patterson, jeopardized Republican sponsorship. Colorado Republicans convinced congressional Republicans that Patterson's election was a unique protest vote against the corrupt governor, Edward M. McCook, a Republican appointed by [President Ulysses S.] Grant." DALE A. OESTERLE & RICHARD B. COLLINS, *THE COLORADO STATE CONSTITUTION: A REFERENCE GUIDE* 22 n.24 (2002).

⁶ See C. VANN WOODWARD, *REUNION AND REACTION: THE COMPROMISE OF 1877 AND THE END OF RECONSTRUCTION* 5-7, 9, 16 (rev. ed., Doubleday Anchor Books 1956) (1951).

⁷ The exact terms of the 1877 Compromise have eluded historians. *Id.* at 3-5. Suffice to say that the removal of federal troops from the South and the concomitant assertion of "home rule" by Southern whites were undeniable conditions. *Id.* at 7. For scholarly accounts about the nature of the promises made to the nation's Black citizenry, see generally ROBERT J. KACZOROWSKI, *THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE AND CIVIL RIGHTS, 1866-1876* (1985) (describing the withdrawal of federal courts from civil rights that forced black citizens to rely only on local law enforcement for civil rights protection); WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* (1988) (discussing how a variety of initial conceptions of the Fourteenth Amendment allowed for subsequent interpretations that did not provide a broad scope for Fourteenth Amendment protections); DONALD G. NIEMAN, *PROMISES TO KEEP: AFRICAN-AMERICANS AND THE CONSTITUTIONAL ORDER, 1776 TO THE PRESENT* (1991) (providing an account of the evolving relationship between African-Americans and the Reconstruction Amendments); JAMES D. SCHMIDT, *FREE TO WORK: LABOR LAW, EMANCIPATION, AND RECONSTRUCTION, 1815-1880* (1998) (discussing how legal developments in vagrancy, contract, and labor laws after Reconstruction affected the North and the South).

⁸ See ATHEARN, *supra* note 4, at 17, 104; OESTERLE & COLLINS, *supra* note 5, at 1.

⁹ *Dunton v. Montoyo*, 1 Colo. 99, 100 (1868).

¹⁰ *Id.*

language of the nation.”¹¹ Mirroring some of the detente of the national sectional struggle and the prominent role played by Colorado's Spanish-speaking citizenry in the formation of its state constitution,¹² however, the Colorado Supreme Court in 1879 limited the holding of the 1868 case solely to the use of English in the pleadings.¹³

It should come as no surprise that this same ambivalence about the human rights concerns of its diverse citizenry would become embedded in both the political construction and jurisprudential development of Colorado's “Centennial” Constitution. Accepted by the voters of Colorado on July 1, 1876,¹⁴ the state constitution has expressed over time both the boundless promise and deep discord of an age immensely concerned about individual freedom and social equity. The document's Article II contains the most explicit declarations of the basic equality guarantees held by the state's citizenry.¹⁵ Given the constitution's creation in the years after the Civil War, it is notable that the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the Federal Constitution do not have a counterpart in the state's text. Nonetheless, the Colorado framers were animated by the Populist demand for human rights.¹⁶ The original 1876 Constitution thus includes freedom of elections,¹⁷ equality of justice,¹⁸ due process of law,¹⁹ prohibition against slavery,²⁰ and property rights of aliens²¹

¹¹ *Id.*

¹² Latinos constituted a small but significant faction in the Colorado constitutional convention. Though there were only three official delegates—Casimiro Barela, Agapito Vigil, and Jesús María García—many others attended the convention proceedings. See JOSÉ EMILIO FERNÁNDEZ, *THE BIOGRAPHY OF CASIMIRO BARELA* 37 (A. Gabriel Meléndez trans., 2003); OESTERLE & COLLINS, *supra* note 5, at 6; GORDON MORRIS BAKKEN, *ROCKY MOUNTAIN CONSTITUTION MAKING, 1850–1912*, at 17, 111 n.12 (1987).

¹³ *Town of Trinidad v. Simpson*, 5 Colo. 65, 69 (1879). In a later case, the Colorado Supreme Court declared that neither courts nor judges “shall ‘discriminate against, reject or challenge any person, otherwise qualified, on account of such person speaking the Spanish or Mexican language, and not being able to understand the English language.’” *In re Allison*, 22 P. 820, 822 (Colo. 1889) (quoting 1885 Colo. Sess. Laws 263).

¹⁴ Rebecca Jones, *From State of Flux to Statehood Colorado Overcame Obstacles of Territorial Days*, *ROCKY MTN. NEWS*, July 27, 1999, at 14A.

¹⁵ COLO. CONST. art. II.

¹⁶ BAKKEN, *supra* note 12, at 22.

¹⁷ COLO. CONST. art. II, § 5. The section states: “[A]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” *Id.*

¹⁸ *Id.* § 6. The section states: “[C]ourts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and . . . right and justice should be administered without sale, denial, or delay.” *Id.*

¹⁹ *Id.* § 25. The section states: “[N]o person shall be deprived of life, liberty, or property without due process of law.” *Id.*

guarantees. In addition, the original constitution explicitly provided that the publication of laws be printed in Spanish and German²² and that the right of suffrage could be extended by the state legislature to women of lawful age.²³

Perhaps no issue was as contentious, or as representative of the ambivalent meaning of social equity, than the issue of women's suffrage. First advocated by Territorial Governor Edward McCook and his wife in 1870,²⁴ the movement to extend suffrage to women in Colorado gained momentum after the U.S. Supreme Court declared in 1874 that the U.S. Constitution neither extended nor prohibited suffrage to women.²⁵ The Court left it up to individual states to determine the parameters of who would and would not be extended full political citizenship.²⁶ Thus, Colorado's push for statehood nearly 100 years after the Declaration of Independence and 10 years after the end of the Civil War provided for many suffragists a special mandate connected to Colorado's admittance to the Union as a full and equal partner. As a spokesperson for the National American Woman's Suffrage Association declared, Coloradans "advanced a 'free-women-on-the-anniversary-of-men's-freedom' plea."²⁷

²⁰ *Id.* § 26. The section states: "[T]here shall never be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted." *Id.*

²¹ *Id.* § 27. The section states: "Aliens, who are or who may hereafter become *bona-fide* residents of this State, may acquire, inherit, possess, enjoy, and dispose of property, real and personal, as native-born citizens." *Id.*

²² COLO. CONST. art. XVIII, § 8 (amended 1991). Prior to amendment, the section stated: The general assembly shall provide for the publication of the laws passed at each session thereof; and, until the year 1900, they shall cause to be published in Spanish and German a sufficient number of copies of said laws to supply that portion of the inhabitants of the State who speak those languages, and who may be unable to read and understand the English language.

Id.

²³ COLO. CONST. art. VII, § 2 (repealed 1989). The section originally stated: The general assembly shall, at the first session thereof, and may at any subsequent session, enact laws to extend the right of suffrage to women of lawful age, and otherwise qualified according to the provisions of this article. No such enactment shall be of effect until submitted to the vote of the qualified electors at a general election, nor unless the same be approved by a majority of those voting thereon.

Id.

²⁴ Billie Barnes Jensen, *Colorado Woman Suffrage Campaigns of the 1870s*, 12 J. W. 254, 256-57, 260 (1973); see also John R. Morris, *The Women and Governor Waite*, 44 COLO. MAG. 11 (1967) (describing attempts made to introduce woman suffrage in Colorado and the eventual attainment of woman suffrage under Governor Davis H. Waite).

²⁵ *Minor v. Happersett*, 88 U.S. 162, 178 (1874).

²⁶ *Id.* at 175-76, 178.

²⁷ William B. Faherty, *Regional Minorities and the Woman Suffrage Struggle*, 33 COLO. MAG. 212, 214 (1956).

These efforts to embed civic equality for women, however, pitted the rights of women against those of other minorities in the state. As early as 1866, William Byers, publisher and editor of the *Rocky Mountain News*, argued in an editorial that white women deserved the vote more than the nation's recently emancipated African Americans.²⁸ As evidence that racial tension extended beyond blacks and whites, during the 1876 constitutional convention national suffragists blamed "the Mexican vote" for the failure of men to grant the franchise to women even though Agapito Vigil, a Spanish-speaking legislator representing Huerfano and Las Animas counties, was a vocal and active supporter of women's suffrage.²⁹

Male Coloradans extended to women the right to vote on November 7, 1893.³⁰ Colorado thus became the second state in the Union, after Wyoming in 1890, to allow gender neutral suffrage.³¹ Until 1911, when California reevaluated its suffrage laws, Colorado boasted the largest city (Denver) in the nation allowing women to vote.³² Similar to the 1860s and 1870s, ethnicity and race continued to play a role in the suffrage debate. According to one historian, "[b]y enfranchising women, natives gained more ballots than did the foreign-born."³³ Ironically, while many women suffragists lamented the fact that male ex-slaves had the franchise while white women did not, African Americans in the state were expressly excluded from voting in the ratification of the state's constitution.³⁴ Despite its provisions outlawing slavery and its temporal relationship to the anniversary of the nation's most meaningful freedom movement, the

²⁸ ATHEARN, *supra* note 4, at 161 & 384 n.20.

²⁹ *Id.*; see 3 HISTORY OF WOMAN SUFFRAGE 719 (Elizabeth Cady Stanton et al. eds., Arno Press 1969) (1886).

³⁰ Stephen J. Leonard, "Bristling for Their Rights": Colorado's Women and the Mandate of 1893, COLO. HERITAGE, Spring 1993, at 7, 13.

³¹ *Id.* at 7.

³² *Id.* at 13.

³³ *Id.* at 12. Many Colorado citizens feared the influx of foreign immigrants to Colorado in the 1880s and early 1890s and their potential political influence in the state's urban enclaves. *Id.*

³⁴ The Enabling Act for the Colorado Constitution stipulated that only residents eligible to vote in territorial elections could vote in the election that ratified the constitution. Act of Mar. 3, 1875, ch. 139, § 3, 18 Stat. 474, 474. Under the controlling 1868 Colorado territorial law, voters were males over the age of twenty-one "not being a negro or mulatto." COLO. REV. STAT. ch. 28, § 1 (1868). The disenfranchisement of blacks in the 1860s and 1870s seems rather odd since less than 500 blacks resided in the Colorado Territory alongside nearly 40,000 whites. Jesse T. Moore, Jr., *Seeking a New Life: Blacks in Post-Civil War Colorado*, 78 J. NEGRO HIST. 166, 167 (1993). The Enabling Act, however, also mandated that the proposed constitution could "make no distinction in civil or political rights on account of race or color." Act of Mar. 3, 1875, ch. 139, § 4, 18 Stat. 474, 474. Thus, the original 1876 Constitution limited suffrage to all males over age 21. COLO. CONST. art. VII, § 1 (amended 1902).

Colorado Constitution of 1876 remained ambivalent about its promise of human rights and social equality in a post-emancipation age.

Such ambivalence would remain a peculiar feature of the Colorado Constitution over the course of the next 125 years. During World War II, when the state contained one of the largest Japanese American populations in the nation as a result of “war relocation,” some Coloradans attempted to amend the state constitution to prevent these Japanese newcomers from owning real estate in the state.³⁵ In the months leading up to the vote for the amendment, many of Colorado’s Japanese Americans found themselves barred from public discussion of the matter. According to one activist, “I think this a fine example of Fascism in Denver When people are so fearful of facing frank discussion that they invent a device to allow only sympathetic persons in, then they are afraid to face the truth.”³⁶ The proposed amendment, however, was ultimately defeated in the statewide vote.³⁷ One newspaper, recognizing the significance of the defeat, boldly declared:

Colorado voters are to be congratulated for their wisdom and tolerance in rejecting Amendment No. 3 This amendment . . . could readily have been a precedent for other and possibly more vicious prejudice legislation. On this basis it was rejected by a substantial majority. It is good to live in a state where sanity and humanness can still exist despite the emotions of war!³⁸

The heady promises of human rights contained in the state’s constitutional culture continued into the Cold War period. In 1962, in the midst of the nation’s second Reconstruction, Colorado

³⁵ The amendment would have eliminated article II, section 27, from the state constitution. See *Anti-Japanese Petition Filed With 8,000 Names to Spare*, DENV. POST, Mar. 7, 1944, at 24. This article provides that “[a]lliens, who are or may hereafter become *bona-fide* residents of this State, may acquire, inherit, possess, enjoy, and dispose of property, real and personal, as native-born citizens.” COLO. CONST. art. II, § 27.

³⁶ *Three American-Born Japs Barred From Meeting for Amendment 3*, ROCKY MTN. NEWS, Nov. 3, 1944, at 8 (quoting a representative of the Japanese American Citizens’ League).

³⁷ See Editorial, *Tolerance in Colorado*, ROCKY MTN. NEWS, Nov. 10, 1944, at 14. The City and County of Denver reflected very well the ambivalence regarding social equality and human rights in the state. While 72,652 Denverites voted in favor of the measure, 62,279 were against. *The Vote in Denver*, ROCKY MTN. NEWS, Nov. 9, 1944, at 5. At the same time, Denver voters overwhelmingly supported a state constitutional amendment that allowed women to serve on juries. *Id.* The amendment to allow women to serve on juries substituted the word “persons” in place of “men” in article II, section 23 of the state constitution. See COLO. CONST. art. II, § 23.

³⁸ Editorial, *Tolerance in Colorado*, ROCKY MTN. NEWS, Nov. 10, 1944, at 14.

Supreme Court Justice Otto Moore unambiguously endorsed the ability of the state's legislature to pass one of the most far reaching equal housing laws in the nation.³⁹ In supporting the housing legislation, Justice Moore declared that the court had "no hesitancy in stating that there are fundamental and inherent rights with which all humans are endowed even though no specific mention is made of them in either the national or state constitutions."⁴⁰ Of particular importance for Justice Moore was the enhanced authority Congress originally extended to Colorado in the 1875 Enabling Act.⁴¹ Such authority, according to Justice Moore, "was careful to require that the state constitution shall 'make no distinction in civil or political rights on account of race or color.'"⁴² This gave, in the court's estimation, the state legislature the ability to pass meaningful and effective anti-discrimination legislation.⁴³

Moreover, similar to the nineteenth century constitutional debates regarding suffrage, racial discrimination in Colorado spurred a momentous reevaluation of gender equity in the state. In 1972, Colorado voters added an "equality of the sexes" provision to Article II of the state constitution.⁴⁴ Almost identical to the unratified Equal Rights Amendment to the United States Constitution,⁴⁵ the Colorado "equality of the sexes" amendment reinforced the state's long-standing role in pioneering political rights and social equity for women. This was a role that was made nationally apparent in 1967 when Colorado became the first state in the nation to liberalize its abortion laws.⁴⁶

Other constitutional developments, however, signaled a dramatic retreat from the Centennial Constitution's promise of equality. For

³⁹ See Colorado Fair Housing Act of 1959, COLO. REV. STAT. § 69-7-6(12) (1959); Colo. Anti-Discrimination Comm'n v. Case, 380 P.2d 34, 41 (Colo. 1962). On the expansiveness of the Colorado Fair Housing Act of 1959, see JAMES A. ATKINS, HUMAN RELATIONS IN COLORADO: A HISTORICAL RECORD 154-55 (1968).

⁴⁰ Case, 380 P.2d at 39.

⁴¹ Id. at 40; see *supra* note 34; Act of Mar. 3, 1875, ch. 139, § 4, 18 Stat. 474, 474.

⁴² Case, 380 P.2d at 40 (quoting Act of Mar. 3, 1875, ch. 139, § 4, 28 Stat. 474, 474).

⁴³ See *id.* at 40-41.

⁴⁴ See COLO. CONST. art. II, § 29 ("Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex.").

⁴⁵ See WILLIAM COHEN & JONATHAN D. VARAT, CONSTITUTIONAL LAW 786 (11th ed. 2001). The Federal Equal Rights Amendment was passed on March 22, 1972. *Id.* The usual seven-year period for ratification was extended by Congress in 1978, until June 30, 1982. *Id.* On that date the amendment failed, since only thirty-five states of the thirty-eight required had ratified it. *Id.*

⁴⁶ Jerome S. Legge, Jr., *The Determinants of Attitudes Toward Abortion in the American Electorate*, 36 W. POL. Q. 479, 488 (1983); KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 41, 143 (1984).

instance, in 1974, almost one hundred years after the ratification of the state constitution and on the eve of the nation's bicentennial, anti-integrationists in Colorado responded to the U.S. Supreme Court's *Keyes v. School District No. 1*⁴⁷ desegregation decision by encouraging Colorado citizens to pass the Poundstone Amendment to the state constitution.⁴⁸ Touted by its supporters as a measure to deprive political power from the City and County of Denver (including its school district that was under orders to desegregate) over the larger metropolitan area, the Amendment greatly limited the ability of the city to acquire land through annexation and thus end metropolitan educational segregation.⁴⁹ One editorial at the time noted:

It is, I think, right to suppose that the primary reason for the easy passage of the Poundstone amendment was the suburbs' fear of busing. If, in other words, there is to be a ghetto, and busing is to relieve the pressures and injustice of the ghetto, let it all be within the City and County—and school district—of Denver.⁵⁰

Another citizens' initiative that same year amended the "religious test and race discrimination" in public education provision of the constitution to prohibit the busing of students to achieve racial balance.⁵¹ This newly amended clause—itsself a vestige of deep conflict and distrust that Colorado's pioneer Protestant migrants

⁴⁷ 413 U.S. 189 (1973).

⁴⁸ See COLO. CONST. art. XX, § 1; COLO. CONST. art. XIV, § 3; see also STEPHEN J. LEONARD & THOMAS J. NOEL, DENVER: MINING CAMP TO METROPOLIS 379 (1990) (describing the effects of the Poundstone Amendment).

⁴⁹ LEONARD & NOEL, *supra* note 48, at 379. The Poundstone Amendment anticipated the U.S. Supreme Court's ruling in *Milliken v. Bradley* that desegregation plans based upon the Fourteenth Amendment could not extend beyond the boundaries of a school district found by courts to be segregated, 418 U.S. 717, 744–45 (1974).

⁵⁰ Franklin J. James & Christopher B. Gerboth, *A Camp Divided: Annexation Battles, the Poundstone Amendment, and Their Impact on Metropolitan Denver, 1941–1988*, 5 COLO. HIST. 129, 173 n.87 (2001) (quoting a newspaper editorial by John Bromley). James and Gerboth noted that Frida Poundstone, the author of the Amendment, "intentionally stoked suburban fears by raising the specter of court-ordered busing on a metropolitan scale." *Id.* at 158.

⁵¹ As originally written, Article IX, section 8 read:

No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

COLO. CONST. art. IX, § 8 (amended 1974). The 1974 amendment added: "nor shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance." COLO. CONST. art. IX, § 8.

held of the state's Catholic Spanish-speaking population in the 1870s⁵²—undermined the ability of the state to achieve equality of educational opportunity in its public schools.⁵³ Instead, the Amendment made manifestly apparent the constitution's importance in maintaining the color lines of the state's multiracial populations.⁵⁴ These changes to the structure of the Colorado Constitution allowed “Colorado voters [to] permanently split Denver from its suburbs in the 1974 election. Suburbanites decided that remaining separate from the city would permit them to maintain racially and economically segregated communities and schools, and to thereby evade the social and economic problems of the central city.”⁵⁵

The flight from social equality would become a defining and problematic feature of the Colorado Constitution as the state's citizenry began their march towards the state's bicentennial anniversary. In a complete repudiation of the multilingual spirit embedded in the original 1876 Constitution, a citizens' initiative in 1988 added an English-only provision to the document.⁵⁶ Four years later, Colorado voters approved an amendment to the state's constitution that prohibited local and state government from enacting laws designed to forbid sexual orientation discrimination.⁵⁷

⁵² ATHEARN, *supra* note 4, at 103.

⁵³ See LEONARD & NOEL, *supra* note 48, at 378–81.

⁵⁴ Beginning with the first treason trial in the United States to involve Japanese Americans in 1944, post-World War II Denver, Colorado's rapidly changing citizenry was forced to confront the meaning of race in relation to peoples who could not be easily categorized into the typical “Black”/“White” understanding of race relations. Over the next three decades, politics and law reconfigured the social geography of the metropolitan area along “White,” “Black,” and “Brown” lines. Indeed, the legal culture of postwar Colorado—from the issues surrounding police brutality and equal employment opportunity to the heated struggle to integrate the city's schools—compelled Denverites of *all* racial groups to become deeply invested in the emergence and maintenance of multiracial color lines in the second half of the twentieth century. Tom I. Romero, II., *Of Race and Rights: Legal Culture, Social Change, and the Making of a Multiracial Metropolis, Denver 1940–1975* (2004) (unpublished Ph.D. dissertation, University of Michigan) (on file with author).

⁵⁵ James & Gerboth, *supra* note 50, at 163.

⁵⁶ COLO. CONST. art. II, § 30(a) (“The English language is the official language of the State of Colorado. This section is self executing; however, the General Assembly may enact laws to implement this section.”).

⁵⁷ *Id.* § 30(b). The amendment provided:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

Id.

The constitutionality of this provision was ultimately decided in *Romer v. Evans* where both the Colorado⁵⁸ and United States Supreme Court⁵⁹ found that the amendment violated the Federal Constitution's Equal Protection Clause. Justice Kennedy's majority opinion noted that this Colorado amendment was particularly troublesome for two reasons: "First, the amendment has the *peculiar property* of imposing a broad and undifferentiated disability on a single named group Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but *animus* toward the class it affects" ⁶⁰

In a very powerful sense, the political and legal fight surrounding *Romer v. Evans* re-connected the Colorado Constitution back to its unique historical origins and original intent.⁶¹ First crafted in an era when the concept—if not the precise definition of liberty and equality—were ubiquitous in American culture and life⁶² and with a congressional mandate to reject any attempt to embed within its structure the nation's most obvious social inequities,⁶³ the Colorado Constitution was drafted by a multiethnic collection of framers who felt the conflicting pressures surrounding the human rights demands of diverse citizenry.⁶⁴ The first territory to become a state after the Civil War, the history of the Colorado Constitution stands as an imperfect expression of the manner by which the "peculiar property" of "animus" directed at a "single named group" would be antithetical to the state and the nation's post-Civil War constitutional traditions. As the state and the nation entered its

⁵⁸ 882 P.2d 1335, 1350 (Colo. 1994).

⁵⁹ 517 U.S. 620, 635 (1996).

⁶⁰ *Id.* at 632 (emphasis added).

⁶¹ A recent ruling by the Colorado Supreme Court reinforced this point about the importance of history and its longstanding promise of equity in the state's jurisprudence. See *Lobato v. Taylor*, 71 P.3d 938, 953 (Colo. 2002). Assessing the claims of Mexican Americans and others to access usury rights to a Mexican land grant, the court argued that "Colorado law is replete with precedent that reflects a strong policy to be true to parties' intentions and recognizes that Colorado's unique history and geography further necessitate judicial recognition of implied rights in land." *Id.* The court granted access rights for grazing, firewood, and timber, but not for hunting, fishing, and recreation after noting a contentious litigation and social history involving language and the property rights of Mexican Americans under the 1848 Treaty of Guadalupe Hidalgo and subsequent American legal regime. *Id.* at 943–45, 957. The ambivalence about this history and the promise of equity, however, is documented in Richard D. Garcia & Todd Howland, *Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre de Cristo/Rael Case*, 16 CHICANO-LATINO L. REV. 39, 39–40 (1995).

⁶² See ERIC FONER, *THE STORY OF AMERICAN FREEDOM* 95–114 (1998).

⁶³ See Act of Mar. 3, 1875, ch. 139, § 4, 18 Stat. 474, 474.

⁶⁴ BAKKEN, *supra* note 12, at 17, 20, 22.

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next one hundred years, however, this promise would seem less certain.