the theory that Congress impliedly had power to protect the enjoyment of every right conferred by the Constitution against deprivation from any source.[33] In *James v. Bowman,*[34] however, the Court held that legislation based on the Fifteenth Amendment that attempted to prohibit private as well as official interference with the right to vote on racial grounds was unconstitutional. That interpretation was not questioned until 1941.[35] But the Court's interpretation of the "state action" requirement in cases brought under § 1 of the Fifteenth Amendment narrowed the requirement there and opened the possibility, when these decisions are considered with cases decided under the Fourteenth Amendment, that Congress is not limited to legislation directed to official discrimination.[36]

Thus, in *Smith v. Allwright*,[37] the exclusion of African-Americans from political parties without the compulsion or sanction of state law was nonetheless held to violate the Fifteenth Amendment because political parties were so regulated otherwise as to be in effect agents of the state and thus subject to the Fifteenth Amendment; additionally, in one passage the Court suggested that the failure of the state to prevent the racial exclusion might be the act implicating the Amendment.[38] Then, in *Terry v. Adams*,[39] the political organization was not regulated by the state at all and selected its candidates for the Democratic primary election by its own processes; all eligible white voters in the jurisdiction were members of the organization but African-Americans were excluded. Nevertheless, the Court held that this exclusion violated the Fifteenth Amend-

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[33] The idea was fully spelled out in Justice Bradley's opinion on circuit in United States v. Cruikshank, 25 Fed. Cas. 707, 712, 713 (No. 14,897) (C.C.D. La. 1874). The Supreme Court's decision in United States v. Cruikshank, 92 U.S. 542, 555–56 (1876), and United States v. Reese, 92 U.S. 214, 217–18 (1876), may be read to support the contention. *Ex parte* Yarbrough, 110 U.S. 651 (1884), involved a federal election and the assertion of congressional power to reach private interference with the right to vote in federal elections, but the Court went further to broadly state the power of Congress to protect the citizen in the exercise of rights conferred by the Constitution, among which was the right to be free from discrimination in voting protected by the Fifteenth Amendment. Id. at 665–66.

[34] 190 U.S. 127 (1903), holding unconstitutional Rev. Stat. § 5507, which was § 5 of the Enforcement Act of 1870, ch. 114, 16 Stat. 140.

[35] *E.g.*, United States v. Classic, 313 U.S. 299, 315 (1941); United States v. Williams, 341 U.S. 70, 77 (1951).

[36] *See* "Congressional Definition of Fourteenth Amendment Rights," *supra*.

[37] 321 U.S. 649 (1944).

[38] "The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restrictions by any State because of race. This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied." 321 U.S. at 664.

[39] 345 U.S. 461 (1953).