

LAW SCHOOL

Maybell Romero
Associate Dean for Faculty Research and Programs
McGlinchey Stafford Associate Professor of Law

August 31, 2026

Eleanor Barrett
Deputy Director
The American Law Institute
Via: https://www.ali.org/forms/young_scholars/

Re: Nomination of Carla Laroche for the ALI Early Career Scholars Medal

Dear Ms. Barrett:

I write to nominate my colleague Carla Laroche, Felder-Fayard Associate Professor of Law at Tulane University School of Law and Core Faculty at the Murphy Institute, for the ALI Early Career Scholars Medal. Professor Laroche has held a tenure-track appointment since July 2023, well within the Medal's seven-year eligibility window, and her scholarship on felony disenfranchisement is the kind of work the Medal is designed to recognize. Professor Laroche's work is doctrinally rigorous, empirically grounded, and built to be relied upon by legislatures, courts, lawyers, and other advocates working to move the law forward.

The main thread of Professor Laroche's research agenda traces a sustained inquiry into how states use facially neutral legal structures to exclude people with criminal convictions—disproportionately Black people, and Black women in particular— from the ballot box. Three of her articles, which have been provided with this letter, demonstrate both the depth of this agenda and its concrete potential to shape law reform.

In *Black Women and Voter Suppression*, 102 B.U. L. Rev. 2431 (2022), Professor Laroche used Florida's post-Amendment 4 “disenfranchisement maze” as a case study showing how facially race-neutral voting-rights-restoration schemes merely reproduces Jim Crow-era exclusion. The article also details specific potential state and federal reforms, from streamlined restoration procedures to targeted funding for community-based voter assistance, that legislators and advocates can implement directly.

In *Voter Emancipation in Slavery's Afterlife*, 56 Seton Hall L. Rev. 201 (2025), she builds on that foundation with a novel taxonomy of Black women's “proactive” and “reactive” legal resistance to voter exclusion, tracing a through-line from slavery to present-day criminalization of the vote. The article closes with a concrete reform agenda which she addresses to legislatures, election officials, and community

organizations, for finally dismantling the practices she identifies, reflecting the reform-oriented ambition the Medal recognizes.

Her forthcoming article, “Voter Zoning,” (Yale L. & Pol’y Rev., forthcoming 2026), is the most ambitious installment yet. Professor Laroche imports the doctrinal structure of zoning and public nuisance law to reframe felony disenfranchisement as a system of “physical” and “administrative” voter zoning. This novel lens that lets her identify barriers, such as prison mail policies and polling-place placement near school-based supervision restrictions, that voting rights scholarship has largely overlooked. The article’s proposed framework for “inclusionary voter zoning” gives states and advocates a structured template for reform grounded in a body of law—zoning and property—that is far more receptive to judicial and legislative intervention than voting rights doctrine has proven to be. The Article’s timing also sharpens its significance. It directly engages the Supreme Court’s April 2026 decision in *Louisiana v. Callais*, which gutted Section 2 of the Voting Rights Act by requiring plaintiffs to prove discriminatory intent rather than effect. It also explains why Professor Laroche’s zoning-based framework offers a path to reform through state and local law precisely where federal voting-rights doctrine has now been foreclosed. Doctrinal innovations like these have the potential to move law reform forward where more conventional approaches have stalled.

Professor Laroche has also secured a Tulane University Carol Lavin Bernick Faculty Grant for 2026–27 to continue this research and has several additional works-in-progress that extend the same reform-oriented inquiry. Her scholarship is grounded in years of direct advocacy on these exact issues, including her work as a Southern Poverty Law Center Law Fellow on Florida’s mass incarceration reforms and her role as counsel in the Florida Supreme Court’s advisory opinion proceedings on Amendment 4. Few early-career scholars bring that combination of sustained doctrinal innovation and litigation experience to their academic work. It is a large part of why her scholarship reads not as an academic exercise but as a genuine roadmap for practical and possible reform.

For these reasons, I recommend Carla Laroche for the ALI Early Career Scholars Medal without reservation. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,



Maybell Romero

Associate Dean for Faculty Research and Programs

McGlinchey Stafford Associate Professor of Law

CARLA LAROCHE

Felder-Fayard Associate Professor of Law
Tulane University School of Law & The Murphy Institute
claroche1@tulane.edu • (504) 865-5908 (office)

ACADEMIC APPOINTMENTS & EXPERIENCE

Tulane University School of Law & The Murphy Institute, New Orleans, LA

Felder-Fayard Associate Professor of Law July 2023-present
Core Faculty, Murphy Center for Law and the Economy July 2023-present
Gordon Gamm Faculty Scholar 2024-25 May 2024-June 2025
Courses: Criminal Law, Evidence, Criminal Justice Seminar, Prison Industrial Complex

Washington and Lee University School of Law, Lexington, VA

Associate Clinical Professor of Law July 2022-June 2023
Assistant Clinical Professor of Law July 2021-June 2022
Course: Civil Rights and Racial Justice Clinic

Florida State University College of Law (FSU), Tallahassee, FL

Clinical Professor of Law Aug. 2019-June 2021
Visiting Clinical Professor of Law July 2018-Aug. 2019
Courses: Gender and Family Justice Clinic, Collateral Consequences Project, Gender Justice, COVID-19 and the Law

Columbia Law School, Incarceration and Families Clinic, New York, NY

Teaching Assistant & Student Advocate: Professor Philip Genty Jan. 2011-May 2012

Columbia Law School, Legal Practice Writing II, New York, NY

Teaching Assistant & Student Editor: Professors Philip Genty & Tope Yusuf Sep. 2010-May 2011

EDUCATION

Columbia Law School, New York, NY

Juris Doctor May 2012
Honors: Harlan Fiske Stone Scholar, Jane Marks Murphy Prize
Activities: Columbia Human Rights Law Review, Staff Editor; Neighborhood Defenders Service, Community Defense Extern; Queens County District Attorney's Office, Domestic Violence Bureau Extern

Harvard Kennedy School (HKS), Cambridge, MA

Master in Public Policy, International and Global Affairs Concentration May 2012
Thesis: *Military to the Rescue: Using Seafaring Piracy as a Case Study Regarding the Use of the U.S. Military to Police Transnational Crimes*

Princeton University, Princeton, NJ

A.B. in History, Women and Gender Studies Certificate June 2006
Thesis: *Mother Anzacs: Using Personal Narratives to Identify the Perceived Role of Australian World War One Nurses*

JUDICIAL CLERKSHIP

U.S. District Court, Southern District of Florida, West Palm Beach, FL

Law Clerk to the Honorable Donald M. Middlebrooks

July 2013-Sep. 2014

Researched and wrote on legal issues in civil, patent, and criminal cases. Wrote bench memoranda for U.S. Court for Appeals for the Eleventh Circuit cases when judge sat by designation twice.

PUBLICATIONS

Law Journals & Works-in-Progress

Carla Laroche, *Voter Zoning*, 45 *Yale Law & Policy Review* (forthcoming 2026).

Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [Seton Hall Law Review](#) 201, 201-66 (2025).

Carla Laroche, *Black Women's Voter Emancipation in Slavery's Afterlife*, Address at the University of Richmond Law Review Symposium: Vestiges of the Confederacy: Reckoning with the Legacy of the South (Mar. 1, 2024), in 58 [University of Richmond Law Review](#) 653, 653-669 (2024).

Carla Laroche, *Black Women and Voter Suppression*, 102 [Boston University Law Review](#) 2431, 2431-2495 (2022).

Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 [Columbia Journal of Race & Law](#) 517, 517-556 (2022).

Sharecropping Democracy (work-in-progress)

Comparative Voter Zoning (work-in-progress)

Disenfranchised & Innocent (work-in-progress)

Family Legal Fiction (work-in-progress)

Book Chapters

Carla Laroche & Tina Luongo, *Forward: Intentional Inclusion*, in [Women in Criminal Law: A Practical Guide for Inclusive and Thriving Workplaces](#) (Maryam Ahranjani ed., 2026).

Carla Laroche et al., *Sexual Assault Proceedings on College Campuses: Current Issues*, in *The State of Criminal Justice 2017* (Mark E. Wojcik ed., 2017).

Carla Laroche et al., *Double Sentence: The Consequences Incarcerated Mothers Face and the Impact on Their Children*, in *The State of Criminal Justice 2016*, 207 (Mark E. Wojcik ed., 2016).

Editorials, Blogs, & Popular Press

Carla Laroche & Janet Garcia-Hallett, *Protect the Abortion Rights of People in Prison Too*, [Ms. Magazine](#), Dec. 20, 2022.

Carla Laroche, *No Sentencing Enhancements for Recklessness Convictions under Federal Armed Career Criminal Act*, [SCOTUSblog](#), June 23, 2021.

Carla Laroche, *Love Letters to Small Businesses: The Baker Who Offers Delicious Cakes and a Sense of Home Every Time I Enter*, [New York Times](#), Feb. 13, 2021.

Carla Laroche, *Argument Analysis: Justices Consider Whether Crimes of Recklessness Require Longer Sentences under Armed Career Criminal Act*, [SCOTUSblog](#), Nov. 8, 2020.

Carla Laroche, *Case preview: Does “Use of Physical Force” Include a Mens Rea of Recklessness?*, [SCOTUSblog](#), Nov. 2, 2020.

Carla Laroche, *Black Women’s Voting Rights Silenced Yet Again*, [Tampa Bay Times](#), Aug. 2020.

Carla Laroche & Tina Luongo, *Women in Criminal Justice Task Force Launches*, in [ABA Criminal Justice Magazine](#) (Apr. 2019).

Carla Laroche, *Why a YouTube Video Continues to Affect Your Access to Online Banking*, [Lexology](#), Apr. 17, 2013.

Carla Laroche et al., *A Brave New World for Bank Regulation*, [Law360](#), Mar. 2013.

Carla Laroche & Kevin Petrasic, *Considerations for Commenting on CARD Act’s Impact*, [Law360](#), Jan. 2013.

Carla Laroche & Kevin Petrasic, *CFPB Seeks Comment on Policy to Encourage Trial Consumer Disclosure Programs*, [Stay Current: A Client Alert from Paul Hastings](#), Dec. 2012.

Carla Laroche & Kevin Petrasic, *CFPB Ombudsman Annual Report Highlights Consumer Complaint Process, CFPB Enforcement Attorneys at Exams*, [Stay Current: A Client Alert from Paul Hastings](#), Dec. 2012.

HONORS, AWARDS, & RECOGNITION

Tulane University Carol Lavin Bernick Faculty Grant (conducting research on how democratic systems can expand voting access for people with criminal convictions)	2026-27
Greater New Orleans A. Louis Martinet Legal Society, Inc., Dr. Norman C. Francis Award (recognizing exemplary educators for their outstanding contributions to the legal community, scholarly discourse, and civic education)	2025
Tulane University Provost’s Award for Excellence in Equity, Diversity, and Inclusion (recognizing research that addresses societal inequities and promotes social change)	2024
FSU Community Engaged Teaching (Graduate) Award	2021
Tallahassee Democrat, 25 Women You Need to Know	2021
FSU Black Law Students Association Hall of Fame Inductee	2021
Clinical Legal Education Association (CLEA) Honorable Mention for Excellence in a Public Interest Case or Project Award	2020
National Bar Association (NBA) 40 Under 40 Nation’s Best Advocates Award	2017
NBA 40 Under 40 Excellence in Activism Award	2017
NBA Young Lawyers Division Humanitarian Award	2017
American Bar Association (ABA) On the Rise Top 40 Young Lawyers Award	2017
Ms. JD Fellow	2011-12
Columbia Human Rights Internship Program Participant	2010
Columbia Parker School of Foreign and Comparative Law Fellow	2009-12
HKS Public Service Fellow	2008-12
HKS Belfer Center for Science and International Affairs Student Fellow	2008-12
HKS Program in Criminal Justice Policy & Management Summer Internship	2009

NOTABLE LITIGATION & REPORTS

U.S. District Court for the Northern District of Florida

Counsel, *United States v. Evelyn Bozon Pappa*, et al., Case No. 95-00084-CR-JAL (N.D. Fla. 2021) (drafted successful post-conviction compassionate release motion for client who served twenty-six years of a life without parole sentence).

U.S. Court of Appeals for the Eleventh Circuit

Consultant for Appellants, *McCoy v. Governor of Florida*, Case No. 20-12304 (11th Cir. 2020).

U.S. House of Representatives Committee on Ways and Means

Carla Laroche and Brenna Fischer, [Comments for the Record](#) of the May 27, 2020, Hearing on the Disproportionate Impact of COVID-19 on Communities of Color (2020).

Florida Supreme Court

Brief of Interested Parties [Jennifer LaVia and Carla Laroche](#) in Advisory Opinion to the Governor RE: Implementation of Amendment 4, the Voting Restoration Amendment, Case. No. SC19-1341 (Fla. 2019).

U.S. Commission on Civil Rights

Carla Laroche, [Comments](#) on the Barriers to Reentry for Women Incarcerated in Florida, Public Briefing on Women in Prison: Seeking Justice Behind Bars (2019).

PROFESSIONAL EXPERIENCE

Southern Poverty Law Center, Tallahassee, FL

Law Fellow – Criminal Justice Reform

Sep. 2016-June 2018

Advocated reforming the mass incarceration of children and adults in Florida. Researched and presented on racial and socioeconomic disparities in the criminal legal system. Investigated the conditions and educational services in prisons. Drafted talking points on legislative priorities. Supervised and mentored law student interns and externs.

Hunton Andrews Kurth LLP (formerly Hunton & Williams LLP), Richmond, VA

Pro Bono Fellow

Nov. 2014-Aug. 2016

Served systemically excluded communities through diverse and demanding public interest casework. Offered general legal advice and served as Haitian-Creole translator for Haitian farmworkers. Supported firm attorneys on pro bono cases.

Paul Hastings LLP, Washington, DC

Associate, Global Banking Group

Oct. 2012-June 2013

Summer Associate

May 2011-July 2011

Researched and wrote legal memoranda and articles on banking regulations, including consumer finance protections, commercial loan licensing procedures, and unfair, deceptive, and abusive acts or practices. Advised on reforms policies related to the Dodd-Frank Wall Street Reform and Consumer Protection Act and enforcement of financial service requirements.

North Australian Aboriginal Justice Agency, Katherine, Australia

Summer Intern – Criminal Division

May 2010-July 2010

Conducted intake interviews with potential clients and wrote memoranda for lawyers.

PRESENTATIONS & SPEAKING ENGAGEMENTS

Discussant at Southeastern Association of Law Schools (SEALS) Annual Meeting, “Old Harms, New Urgency: Reimagining Justice in a Time of Reckoning” in Amelia Island, FL (July 29, 2026).

Discussant at SEALS Annual Meeting, “Voting Rights and Redistricting: The U.S. Supreme Court Decides *Louisiana v. Callais*” in Amelia Island, FL (July 26, 2026).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat, “Sharecropper Democracy” in Chicago, IL (June 20, 2026).

Selected Junior Scholar at Society of American Law Teacher’s Inaugural Progressive Scholars Workshop at Boston University School of Law, “Voter Zoning” held in Boston, MA (Apr. 26, 2026).

Presenter at Poverty Law Conference: The Collateral Consequences of Vulnerability in the Criminal System, “Inclusionary Voter Zoning” held in Los Angeles, CA (Feb. 20, 2026).

Moderator at An Evening with Jamelle Bouie, “America’s Second Founding: Reconstruction” in New Orleans, LA (Feb. 3, 2026).

Presenter at Association of American Law Schools (AALS) Civil Rights Section New Voices in Civil Rights, “Inclusionary Voter Zoning” held in New Orleans, LA (Jan. 8, 2026).

Presenter at Junior Election Law Scholars Workshop, “Inclusionary Voter Zoning” held Virtually (Dec. 9, 2025).

Plenary Panelist at Economic Policy Institute’s Program on Race, Ethnicity and the Economy: Economic Analysis and Research Network Conference, “We’ve Been Here Before: Project 2025 as White Supremacist Backlash” in New Orleans, LA (Nov. 13, 2025).

Discussant at SEALS Annual Meeting, “The Scholarship and Impact of Dorothy Roberts” in Amelia Island, FL (Aug. 1, 2025).

Discussant at SEALS Annual Meeting, “Centering People, Producing Narratives, and Exposing Myths in Criminal Law and Procedure” in Amelia Island, FL (July 29, 2025).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat, “Inclusionary Voter Zoning” in San Diego, CA (June 26, 2025).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat, “Aspiring and Pre-Tenure Faculty Workshop: Building and Executing a Strong Scholarly Agenda” in San Diego, CA (June 25, 2025).

Moderator at Dr. Mary Frances Berry Author Talk and Book Signing, “Slavery After Slavery: Revealing the Legacy of Forced Child Apprenticeships on Black Families, From Emancipation to the Present” in New Orleans, LA (June 5, 2025).

Presenter and Convener at Tulane Law School Gamm Symposium, “Voter Emancipation Deferred: Interrogating Black Women’s Political Power & Purposes” in New Orleans, LA (Mar. 21, 2025).

Presenter at Harvard Black Alumni Global Changemakers Conference, “Black Women & Voter Emancipation” in Cambridge, MA (Sept. 28, 2024).

Presenter at AALS Sections of Education Law and Children’s Law Mid-Year Workshop, “Family Legal Fiction” at Loyola Law School (Sept. 21, 2024).

Discussant at SEALS Annual Meeting, “Criminal Law, Criminal Procedure, and the Legacies of Slavery” in Fort Lauderdale, FL (July 22, 2024).

Presenter at CrimFest, “Voting Emancipation in Slavery’s Afterlife” in New York, NY (July 15, 2024).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat, “Family Legal Fiction” in Durham, NC (June 28, 2024).

Presenter at Global Legal Skills Sixteenth Annual Conference, “Class Norms: Fostering Community & (Potential) Exclusion” in Bari, Italy (June 5, 2024).

Presenter at Emerging Scholars in Critical Race Theory Workshop, “Family Legal Fiction” held Virtually (June 4, 2024).

Presenter at University of Richmond Law Review’s 2024 Symposium: Vestiges of the Confederacy: Reckoning with the Legacy of the South, “Black Women's Voting Emancipation in Slavery’s Afterlife” in Richmond, VA (Mar. 1, 2024).

Presenter at Faculty Colloquium Series at University of Mississippi School of Law, “Voter Emancipation in Slavery’s Afterlife” in University, MS (Feb. 19, 2024).

Presenter at Faculty Speaker Series at Louisiana State University Paul M. Hebert Law Center, “Voter Emancipation in Slavery’s Afterlife” in Baton Rouge, LA (Jan. 10, 2024).

Presenter at Southeastern Junior/Senior Conference at University of Florida Levin College of Law, “Resisting Voting Enslavement: Emancipation from Voter Suppression Based on Criminal Convictions” in Gainesville, FL (Nov. 17, 2023).

Panelist at National Association for Public Defense: We Are the Ones We Have Been Waiting For, “ABA Women in Criminal Justice Task Force’s Ten Principles to Achieve Gender Equity in the Criminal Legal Profession,” held Virtually (Sept. 14, 2023).

Moderator at ABA Annual Meeting, “From Standing Rock to Cop City: Criminal Law’s Role in Environmental Justice & Resistance” in Denver, CO (Aug. 3, 2023).

Discussant at SEALS Annual Meeting, “Critical Evidence Concerns” in Boca Raton, FL (July 29, 2023).

Discussant at SEALS Annual Meeting, “Reforms, Restoration, and Resistance: Criminal Justice and Injustice” in Boca Raton, FL (July 28, 2023).

Panelist at SEALS Annual Meeting, “Criminalizing Family” in Boca Raton, FL (July 27, 2023).

Presenter at Law Journal for Social Justice Symposium at Arizona State University Sandra Day O'Connor College of Law, "Wrongful Convictions and Incarcerated Women" in Phoenix, AZ (Feb. 24, 2023).

Moderator at ABA Midyear Meeting, "Sending Children to Angola Death Row: Implications for Families, Justice, and Reform" in New Orleans, LA (Feb. 2, 2023).

Panelist at AALS Section on Minority Groups Works in Progress: Justice and Inequality, "Decriminalizing Black Women's Votes" held Virtually & San Diego, CA (Jan. 7, 2023).

Presenter at ABA Criminal Justice Section Academics Committee and Academy for Justice at the Arizona State University Sandra Day O'Connor College of Law Academic Works-In-Progress Roundtable, "Decriminalizing Black Women's Votes" held Virtually (Dec. 2, 2022).

Presenter at University of Richmond School of Law Emanuel Emroch Colloquy Series, "Black Women and Felony Voter Suppression" in Richmond, VA (Dec. 2, 2022).

Panelist at SEALS Annual Meeting, "Expanding Experiential: Advancing Racial Justice Across the Curriculum and into the Community" in Miramar Beach, Florida (July 28, 2022).

Reader at Law & Society Association's Feminist Legal Theory Collaborative Research Network Annual Meeting, "Global Intersectionality and Contemporary Human Rights" in Lisbon, Portugal (July 13, 2022).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat, "Decriminalizing Black Women's Vote" in Boston, Massachusetts (June 24, 2022).

Presenter at Decarceration Law Professors: Virtual Works-in-Progress Workshop, "Black Women and Felony Voter Suppression" held Virtually (June 20, 2022).

Presenter at National Conference on Race and Ethnicity in Higher Education, "The Misinformation of Gen Z" in Portland, OR (June 4, 2022).

Presenter at University of Richmond School of Law Junior Faculty Forum, "Black Women and Felony Voter Suppression" in Richmond, VA (May 12, 2022).

Presenter at AALS Annual Conference on Clinical Legal Education Works in Progress: Civil Consequences of Criminal Cases, "Family Restoration Units" held Virtually (May 11, 2022).

Moderator at the ABA Criminal Justice Section's Spring Meeting, "First But Not the Last" in Savannah, GA (Apr. 8, 2022).

Panelist at *University of the District of Columbia Law Review* Activism & the Law: A UDC Law Review Symposium on Critical Race Theory, "Criminal Justice and the Law Panel" held Virtually (Apr. 1, 2022).

Panelist at William & Mary Law School *Journal of Race, Gender, and Social Justice* 2022 Symposium, "Policy Panel" held Virtually (Feb. 26, 2022).

Presenter at AALS Criminal Justice Section New Voices in Criminal Law, “Black Women and Felony Voter Disenfranchisement” held Virtually (Jan. 8, 2022).

Presenter at ABA Criminal Justice Section Academics Committee and Academy for Justice at the Arizona State University Sandra Day O’Connor College of Law Academic Works-In-Progress Roundtable, “The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration” held Virtually (Nov. 5, 2021).

Presenter at Lutie Lytle Black Women Law Faculty Workshop and Writing Retreat: Constitutional Law Session, “Ballot Box Barred: Black Women and Felony Voter Disenfranchisement” held Virtually (June 25, 2021).

Panelist at *Columbia Journal of Race and Law*’s Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being Symposium, Family Defense Lawyering, “The New Jim and Jane Crow Intersect: Defending the Parental Rights of Mothers During Incarceration” held Virtually (June 18, 2021).

Panelist at AALS Annual Conference on Clinical Legal Education, Clinicians of Color Workshop, “What I Wish I Had Known When I Was Starting Out” held Virtually (May 1, 2021).

Presenter at AALS Annual Conference on Clinical Legal Education Works in Progress: Family Law Reentry & Clinical Pedagogy Session, “The New Jim and Jane Crow Intersect: Defending the Parental Rights of Mothers During Incarceration” held Virtually (Apr. 30, 2021).

Panelist at AALS Annual Conference on Clinical Legal Education, “Racism, Racial Trauma, and Clinics: Reimagining Clinical Work through a Racial Justice Lens” held Virtually (Apr. 29, 2021).

Panelist at AALS Annual Conference on Clinical Legal Education, “Gender in Jail, Prison, & Coming Home: Intersectional & Innovative Approaches to Advocacy” held Virtually (Apr. 29, 2021).

Panelist at University of Tennessee College of Law *Tennessee Journal of Race, Gender, & Social Justice* Rethinking Reentry Symposium, “Restoration of Voting Rights” held Virtually (Feb. 23, 2021).

Moderator at the ABA Criminal Justice Section’s Fall Institute, “Training the Next Generation of Criminal Justice Leaders” held Virtually (Nov. 19, 2020).

Panelist at ABA Annual Meeting Criminal Justice Section, “Annual Supreme Court Review-Criminal Cases” held Virtually (Aug. 4, 2020).

Discussant at SEALS Annual Meeting, “Fighting Microaggressions in the Classroom” held Virtually (Aug. 2, 2020).

Panelist at AALS/CLEA Conference on Clinical Legal Education, “What I Wish I Had Known When I Was Starting Out: A Candid Conversation about Clinical Teaching for New Clinicians of Color” held Virtually (July 22, 2020).

Panelist at FSU College of Law/League of Women Voters of Florida, “Executing the Promise of Amendment 4” held Virtually (July 9, 2020).

Moderator at Feminist Legal Theory Summer Series held Virtually (July 8, 2020).

Presenter for Tallahassee Women Lawyers, “A Square Deal: Celebrating Black Women Suffragists’ Efforts to Ratify the 19th Amendment” in Tallahassee, Fla. (Mar. 11, 2020).

Panelist at ABA Midyear Meeting, “School to Prison Pipeline: From Report to Action” in Austin, Tx. (Feb. 15, 2020).

Panelist at FSU Black Law Students Association Pushout, Push Forward, “Jailhouse Lawyers: Legal Empowerment Can Break the Prison Pipeline” in Tallahassee, Fla. (Nov. 22, 2019).

Moderator/Facilitator at the ABA Criminal Justice Section’s Fall Institute, “Voices from the Frontline—Embracing the Narratives of Diverse and Intersectional Women in Criminal Justice” in Washington, DC (Nov. 8, 2019).

Keynote at ABA Criminal Justice Section Women in Criminal Justice Symposium, “Inclusivity and the 19th Amendment” in Nashville, Tn. (Apr. 4, 2019).

Presenter at Trafficked in America Conference, “Making the Invisible Visible” in Tallahassee, Fla. (Jan. 31, 2019).

Presenter at Office of the Public Defender, Ninth Circuit Implicit Bias Seminar, “Delving into Implicit Bias for the Defenders of Justice” in Orlando, Fla. (Dec. 14, 2018).

Moderator for “Enhancing Justice by Reducing Implicit Bias: Strategies for Becoming a Bias Disrupter” at the American Constitution Society’s National Convention, in Washington, DC (June 9, 2018).

Welcome Remarks at the Section of Civil Rights and Social Justice’s “Cholera in Haiti and United Nations Liability” panel during the ABA Midyear Meeting, in Miami, Fla. (Feb. 4, 2017).

Interview with Paulette Brown, then President-Elect, ABA, “Determined to Rise: A Conversation on Law, Leadership and Being ‘The First’” in New York, NY (Oct. 27, 2014).

MEDIA APPEARANCES

Daniella Zalcmán, *Made in America: The Products of US Prison Labor Are All Around Us*, [The Marshall Project](#), July 9, 2026.

Why America Chose White Supremacy Over Democracy - Jamelle Bouie & Carla Laroche, [Baldwin & Co. Ideas Explored](#), Feb. 4, 2026 (recorded live interview of New York Times columnist Jamelle Bouie on U.S. Reconstruction and its relevance today).

Geoff Harris, *Vote Buying Illegal in the US, But Musk and Card Game Company Not Breaking Law*, [The National News Desk](#), Oct. 15, 2024.

Rebekah Sager, *Formerly Incarcerated Black Women Organize to Help Each Other*, [Colorlines](#), Mar. 9, 2024.

Mallory Noe-Payne, *Branded: The Fight to Restore Voting Rights*, [Radio IQ](#), Oct. 25, 2023 (podcast episode analyzing voter exclusion through criminal convictions in Virginia).

Alina Hernandez, *Law Professor Carla Laroche Built Her Career on Advocacy and Justice*, [Tulane Law News](#), Oct. 17, 2023.

Book Discussion: Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights, [ABA Criminal Justice Section \(YouTube\)](#), Mar. 14, 2023.

Amanda Robert, *These 10 Principles Will Advance Gender Equity in Criminal Legal Profession*, *ABA House Says*, [ABA Journal](#), Feb. 6, 2023.

Sabrina Canfield, *Calls Grow for Louisiana to Stop Sending Kids to Adult Prison*, [Courthouse News Service](#), Feb. 3, 2023.

Midyear 2023: Sending Children to 'Angola' Prison Raises Community Alarm, [ABA News](#), Jan. 31, 2023.

Jack Karp, *The Biggest Access to Justice Issues in 2023*, [Law360](#), Jan. 6, 2023.

Eva Herscovitz, *How the "Disenfranchisement Maze" Bars Black Women from the Ballot*, [The Crime Report](#), Oct. 28, 2022.

Barbara Rodriguez, *States are Stepping Up Prosecutions for Voter Fraud. But Who Gets the Harshes Punishment?*, [19th News](#), Oct. 6, 2022.

Hannah Morse, *Three in Palm Beach County Arrested on Election Fraud Charges, Face Up to 5 Years in Prison*, [Palm Beach Post](#), Aug. 20, 2022.

Carliss Chatman, *Incarcerated Mothers: Intersection of the New Jim and Jane Crow*, [Getting Common with Carliss Chatman](#), Feb. 2, 2022 (podcast interview on my scholarship and teaching values).

Alison DeBelder & Chris Moser, *Lead with Love: Carla Laroche*, [Trauma InJustice](#), Oct. 12, 2021.

Jay Weaver & Antonio Maria Delgado, *She Got Life in a Drug Case. Decades Later, Colombian Woman Free, Thanks to Florida Supporters*, [Miami Herald](#), Apr. 16, 2021.

Heather Fuselier, *25 Women: Law Professor Carla Laroche Works to 'Address Injustices'*, [Tallahassee Democrat](#), Mar. 23, 2021.

Blaise Gainey, *Probe Requested After Multi-Million Dollar Donation Made to Pay Felons Fines and Fees*, [WFSU](#), Sep. 25, 2020.

Tallahassee Celebrates 100th Anniversary of Amendment Granting Women's Right to Vote, [WTXL](#), Mar 11, 2020.

RJ Vogt, *How Attys Can Help Dismantle the School-To-Prison Pipeline*, [Law360](#), Feb. 23, 2020.

ABA Roadmaps Way to Turn Off Spigot to School-To-Prison Pipeline, [ABA News](#), Feb. 16, 2020.

Mark Blackwell Thomas, *FSU Law Students Volunteer Expertise in Prisons to Help Families*, [FSU News](#), Jan. 14, 2020.

Emily L. Mahoney, *Who Are the Florida Prison Inmates Serving Outdated Drug Sentences?*, [Tampa Bay Times](#), Jan. 12, 2020.

Emily L. Mahoney, *Why Are So Many Women and Hispanics Serving Outdated Drug Sentences in Florida Prisons?*, [Miami Herald](#), Jan. 12, 2020.

Amanda Robert, *Attorney Pushes for Prisoners to Have More Access to Women's Hygiene Products*, [ABA Journal](#), June 1, 2019.

Carla Laroche '12: *A Rising Star*, [Columbia Law School](#), July 24, 2017.

PROFESSIONAL MEMBERSHIP & SERVICE

Tulane University School of Law & The Murphy Institute

Tulane School of Law

- AI Committee: Member July 2026-present
- Intellectual Life Committee: Member July 2023-May 2024; July 2025-June 2026
- Clinical Appointments Committee: Chair May 2024-June 2025
- Gordon Gamm Comparative Law & Justice Symposium: Scholar May 2024-June 2025
- Directed Research: Faculty Supervisor Aug. 2024-Dec. 2024

Murphy Center for Law and the Economy Workshop

- Core Faculty Aug. 2023-present
- Social Impact of the Criminal Legal System: Organizer Fall 2024 May 2024-Dec. 2024

Tulane University

- Office of Student Conduct: Student Conduct Advisor May 2024-present

AALS

Member

Aug. 2018-present

Election Law Section Executive Committee: Member

Jan. 2026-present

Criminal Law Section Executive Committee: Member

Jan. 2022-Jan. 2024

Section on Clinical Legal Education

- Clinicians of Color Annual Workshop Committee: Co-Chair Nov. 2021-June 2022
- Clinician Crew Member Feb. 2021-Jan. 2022

Lutie Legacy Society, Lutie A. Lytle Faculty Writing Workshop WIP Committee 2026-present

Louisiana Center for Children's Rights, 20th Anniversary Host Committee 2025-present

Ms. JD

Fellowship Mentor

July 2016-Aug. 2017; Aug. 2025-present

Board of Directors Member

Oct. 2013-Oct. 2015

- Governance Committee: Chair, led the national executive director hiring committee

- Finance Committee: Member

Yale Law Journal, Invited Manuscript Reviewer 2023

Washington and Lee University School of Law

Journal of Civil Rights and Social Justice Symposium: Faculty Advisor

Apr. 2022-Dec. 2022

Experiential Education Committee

July 2021-June 2023

EPPC (Curriculum) Committee

July 2021-July 2022

Columbia Law School

Public Interest/Public Service Council: Member

July 2021-present

Alumni of Color Council: Member

Feb. 2016-present

Princeton University Alumni Schools Committee, Admissions Interviewer

Oct. 2006-present

American Bar Association

Member

Aug. 2013-Aug. 2024

Center for Human Rights: Board Member (presidential appointment)

Aug. 2022-Aug. 2024

Criminal Justice Section

- Council Member Aug. 2017-Aug. 2021; Aug. 2023-Aug. 2024

- ABA Commission on Women in the Profession Liaison Aug. 2021-Aug. 2024

- Long Range Planning Committee Member Aug. 2019-Aug. 2024

- Women in Criminal Justice Task Force Co-Chair July 2018-Aug. 2023

- Women in Criminal Justice Committee Co-Chair Aug. 2016-Aug. 2019

Standing Committee on Gavel Awards: Member (presidential appointment)

Aug. 2019-Aug. 2022

Section of Civil Rights and Social Justice

- Council Member Aug. 2017-Aug. 2018

- International Human Rights Committee Chair Aug. 2016-Aug. 2017

Commission on Youth at Risk (presidential appointments)

- Commissioner Aug. 2016-Aug. 2019

- Advisory Committee Member Aug. 2015-Aug. 2016

FSU College of Law

Black Law Students Association: Faculty Advisor

Apr. 2020-June 2021

Dean's Diversity & Inclusion Council: Faculty Member

Jan. 2020-June 2021

Clinical/Externship Faculty Education Committee: Member

Aug. 2018-June 2021

FSU Law Review: Student Note Faculty Advisor

Aug. 2020-Dec. 2020

Big Bend A.F.T.E.R. Reentry Coalition

Jan. 2020-May 2021

Board of Directors Member

Law Enforcement Engagement Committee: Member

Tallahassee/Leon Cnty. Commission on the Status of Women and Girls

Feb. 2019-Sep. 2019

Commissioner appointed by Leon County Commissioner Nick Maddox

National Bar Association, Member

May 2016-June 2019

Tallahassee Barristers Association

Sep. 2016-Aug. 2018

Member

Executive Board: Secretary (June 2017-June 2018), Historian (Sep. 2016-June 2017)

FSU College of Law Black Law Student Association Mentor

American Civil War Museum, Tredegar Society (Junior Board) Member

July 2015-July 2016

EDUCATIONAL CERTIFICATES & TRAININGS

National Center for Faculty Development and Diversity, Virtual

Faculty Success Program, completed Fall 2023

The OpEd Project, Virtual

Write to Change the World Core Workshop, attended July 2020

Inside-Out Prison-Exchange Program, Philadelphia, PA

Instructor Training Institute Certificate of Completion, received Aug. 2019

Xavier University, Institute for Black Catholic Studies, New Orleans, LA

Continuing Education and Enrichment Certificate of Participation, received July 2017

BAR ADMISSIONS Florida (2016), Virginia (2014, inactive), New York (2013)

LANGUAGE SKILLS Haitian Creole (conversational)

VOTER ZONING

*Carla Laroche**

ABSTRACT

States are not only regulating who may vote, they are also zoning people with criminal convictions out of the electorate altogether. Using property and zoning law framing, this Article introduces the concept of “exclusionary voter zoning,” a framework that reveals how states use both location-based and election administrative acts and omissions to impose spatial and procedural barriers on millions of potential voters, beyond the obstacles often recognized as felony disenfranchisement. Whereas exclusionary zoning ordinances barred certain communities, especially Black people, from particular places and spaces, exclusionary voter zoning excludes individuals with convictions from electoral participation by controlling where and how they may vote. As described herein, *physical exclusionary voter zoning* includes legal restrictions related to location, like whether one is incarcerated, one’s state of residence, and any restrictions on movement because one is on probation. *Administrative exclusionary voter zoning* consists of invisible barriers that restrict one’s ability to access voting spaces, like bureaucratic confusion, misinformation, and targeted prosecution. Together, these obstacles create a disenfranchisement maze that zones out eligible voters.

By treating people with criminal convictions as risks to public health,

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safety, and welfare, states use their police power to exclude them from electoral spaces in ways that are arbitrary, racialized, and unrelated to public welfare. This Article proposes inclusionary voter zoning, drawing from state reforms and practices to outline how states may dismantle exclusionary voter zoning. Ultimately, explaining the restriction on people with convictions as a type of space and place exclusion illuminates who has a stake in public matters and governmental operations. Moreover, adopting a more inclusionary voter zoning system, in which all members of the citizenry have access to vote, allows the public to hold the state accountable more effectively.

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INTRODUCTION

People with criminal records may be prohibited from entering numerous public places that others frequent freely and regularly: federally subsidized

housing,¹ schools,² other states,³ and the internet,⁴ to name just a few. This Article adds another location to that list: voting booths.

This Article offers a novel understanding of how space and place work to exclude people with convictions from voting. Building on prior scholarship on geography and civil rights,⁵ this Article analyzes another legal process that appears facially race-neutral⁶ but impacts racial groups differently, namely spatial restrictions that limit voting access for people with convictions.⁷

In the United States, approximately four million people cannot vote because the state in which they live bans people with criminal convictions from voting.⁸ Additionally there are an immeasurable number of people with

¹ Selena Muñoz-Jones & Emily Widra, *How Your Local Public Housing Authority Can Reduce Barriers for People with Criminal Records*, PRISON POL’Y INITIATIVE (Feb. 15, 2023), <https://www.prisonpolicy.org/blog/2023/02/15/publichousing>; Ashley De La Garza, Student Note, *The Never-Ending Grasp of the Prison Walls: Banning the Box on Housing Applications*, 22 THE SCHOLAR 409, 419 (2020).

² Jill S. Levenson, *Restricting Sex Offender Residences: Policy Implications*, AMER. BAR ASSOC’N (Apr. 1, 2009), <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/restricting-sex-offender-residences-policy-implications>; FLA. STAT. § 775.215 (2025) (banning people convicted of certain enumerated sex offenses from living convicted of certain sex offenses from living “within 1,000 feet of any school, child care facility, park, or playground”); Rodricka Stevens, *Police Chief Explains the Misconception with Sex Offenders’ Law*, KLFY (Dec. 13, 2023), <https://www.klfy.com/local/vermillion-parish/police-chief-explains-the-misconception-with-sex-offenders-law>.

³ Ari Fife, *Oklahoma Considers a Pitch from a Private Company to Monitor Parolees with Artificial Intelligence*, THE FRONTIER (Sept. 11, 2025), <https://www.readfrontier.org/stories/oklahoma-considers-a-pitch-from-a-private-company-to-monitor-parolees-with-artificial-intelligence>.

⁴ *Id.*

⁵ See, e.g., Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AMER. UNI. L. REV. 863, 871 (2020); Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO ST. L.J. 1, 5 (2014).

⁶ The term “facially race-neutral” applies to a policy or law that does not state a preference for one race over another. See Sonja Starr, *The Magnet School Wars and the Future of Colorblindness*, 76 STAN. L. REV. 161, 173 (2024) (defining the terms “‘race-neutral,’ ‘facially neutral,’ . . . or to the absence of racial classifications”); Deborah Hellman, *Diversity by Facially Neutral Means*, 110 VA. L. REV. 1901, 1903 (2024) (explaining that “‘facially neutral’ refers to a law or policy that does not explicitly classify on protected grounds”).

⁷ Scholars have used the term “colorblindness” to characterize people’s ability to implement policies and laws that do not seem to be race related on its face and “blindsight” to signify when people “have the ability to see but are not conscious of it. Essentially, they are blinded by the limitations of their cognitive experience.” Anne Bloom & Paul Steven Miller, *Blindsight: How We See Disabilities in Tort Litigation*, 86 WASH. L. REV. 709, 710 (2011). I will use the term “race-neutral” or its variants to represent these terms and move away from “using medical terminology to critique biases” and discrimination. *Id.* at 711.

⁸ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024),

convictions who are eligible to vote but do not do so for many reasons, including the fear of government prosecution.⁹ Both types of disenfranchisement impact Black communities disproportionately given the vast racial disparities of the criminal legal system.¹⁰

I use the term “exclusionary voter zoning” to conceptualize both types of disenfranchisement. The phrase encompasses how state actions and inactions signal, explicitly and implicitly, that otherwise eligible voters with criminal records are unwelcome.¹¹ Going beyond the argument that people with criminal convictions should not vote,¹² exclusionary voter zoning includes visible and invisible barriers that cordon off people with criminal convictions from the right to vote and normalize that separation. In analogizing to the zoning context, this Article focuses on tangible and intangible places and spaces, exploring the use of state police power to regulate the vote of systemically excluded citizens.¹³ States not only exclude voters from the

<https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>. Researchers have often used the term “felony disenfranchisement.” I, however, use the term “voter exclusion based on criminal convictions” to reflect that a person may be banned from voting for a misdemeanor conviction and that the active removal of people with criminal convictions from voting. Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2438 n.24 (2022).

⁹ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 292 (2023). As The Sentencing Report’s 2025 report on voting in prisons noted, “Today, very few jurisdictions in the United States can claim to have an inclusive democracy where every voting age citizen, regardless of conviction or incarceration status, has the right to vote.” Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 4 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>. In fact, only Maine, Vermont, the District of Columbia, and Puerto Rico allow all people with criminal convictions to vote, regardless of whether they are incarcerated or not. *Id.* And, according to The Sentencing Project’s findings, challenges limit people’s access to the ballot while incarcerated in Maine and Vermont even with the promise of voting rights. *Id.* at 3.

¹⁰ See Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 215 (2025). According to one report, “[o]ne in 22 African Americans of voting age is disenfranchised, a rate more than triple that of non-African Americans.” Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹¹ See *infra* Sect. II.

¹² See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2493-94 (2022) (explaining proposed reasons for excluding people with criminal convictions from the vote).

¹³ I use the term “citizen” in this Article to indicate a person, rather than a person’s immigration status. Several state constitutions and federal laws ban noncitizens from voting, though several jurisdictions authorize noncitizens to vote, including the District of Columbia. See *Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEdia, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States (last

actual polling place, but they also zone people out of any attempts to access the vote altogether.¹⁴ Together, the government’s administrative voter zoning and physical voter zoning regulate the exercise of political power by people with convictions, practically treating their voting rights as public nuisances.¹⁵

Comparing voting and property access works because of the high priority society places on both.¹⁶ Property ownership and voting are fundamental rights.¹⁷ Access to land and particular spaces contributes to one’s identity and belonging, and access to the ballot affirms one’s connection to the populace and one’s communal efforts to hold politicians accountable.¹⁸ Both signal power and privilege and both have histories of racial exclusion.¹⁹ In zoning law, a person may own property, not own property, and own property but not be able to use it as they intended.²⁰ In voter exclusion based on criminal

visited Mar. 3, 2026). In fact, people have used the term “returning citizen” to describe individuals with criminal records and represent “their potential for redemption and meaningful participation in society.” *Returning Citizens*, JOBS FOR HUMAN., <https://www.jobsforhumanity.com/training/returning-citizens> (last visited Mar. 1, 2026); Clinton Yates, ‘Returning Citizens’ are Still One of D.C.’s Most Marginalized and Motivated Groups, WASH. POST (Jan. 16, 2015), <https://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups>.

¹⁴ See *infra* Sect. II.

¹⁵ Public nuisance is “an unreasonable interference with a right common to the general public.” RESTATEMENT (SECOND) OF TORTS § 821B (AMER. L. INST. 1979). For a history of the public nuisance doctrine, see Leslie Kendrick, *The Perils and Promise of Public Nuisance*, YALE L.J. 702, 713-27 (2023).

¹⁶ Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay>. Philosophers like John Locke connected property ownership to legitimate political power. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 105, 115 (Ian Shapiro ed., 2003).

¹⁷ See *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948) (discussing right to property); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (discussing right to vote).

¹⁸ DARON ACEMOGLU & JAMES A. ROBINSON, THE NARROW CORRIDOR: STATES, SOCIETIES, AND THE FATE OF LIBERTY 161 (2019); ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 182-84 (2015).

¹⁹ *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948); Mae C. Quinn, *Black Women and Girls and the Twenty-Sixth Amendment: Constitutional Connections, Activist Intersections, and the First Wave Youth Suffrage Movement*, 43 SEATTLE U. L. REV. 1237, 1242-43 (2020) (voting exclusion). Although this Article focuses on government actions and its relationship with people with felony convictions, private individuals’ racist behavior has excluded Black people from accessing land and their voting rights. See, e.g., Erika K. Wilson, *White Cities, White Schools*, 123 COLUM. L. REV. 1221, 1242 (2023) (analyzing the tracking of school district zone boundaries and former sundown towns, which were localities that Black people could not be in after dark during the Jim Crow Era).

²⁰ To explain the power of zoning, Sara Bronin emphasized, “Zoning affects everything that is built in our society. . . . It dictates our economy. It dictates how we relate to each other. It dictates our personal choices, our employment opportunities, our educational

conviction, a person may vote, be banned from voting, and be eligible to vote but not be able to exercise their political power.²¹ Both depend on government permission and regulation.²² The state has the authority to determine people's accessibility to both property and voting. As such, applying zoning law to voting law is not a one-to-one analogy but a new way to consider the impact of voting bans on people with conviction records.

State officials, police, and private individuals who influence state laws employ a strategy I call "voter exclusion by geography" to regulate people with criminal convictions' right to vote along spatial lines through what I label physical and administrative exclusionary voter zoning.²³ Physical exclusionary voter zoning consists of the spaces eligible voters with criminal convictions may not enter and involves analyzing a person's location, for example, whether a person is detained in a prison or jail and what state a person lives in. These geographic spaces dictate whether people with criminal convictions may ever be eligible to vote and illuminate why freedom of movement (or lack thereof) and location matter. This Article also argues that administrative exclusionary voter zoning aims to signal rejection of the vote of people with criminal convictions, even if they are eligible to vote and are in a physical space where they may do so.²⁴ This particular voter zoning entails issues such as when a school is a polling place and a person's post-release conditions bar them from being near a school, elections officials refusing to help register people with convictions to vote, and prosecutors threatening to prosecute anyone with a criminal conviction who votes illegally even when they believe, mistakenly, that they are eligible to vote.

People directly impacted by voting exclusions, advocates, and scholars have described the obvious and hidden impediments that exclude people with criminal records from the ballot box.²⁵ Physical barriers consist of

opportunities, and so much more." BC LAW, *Zoning and Equity*, at 1:00:54-1:01:00, 1:01:12-1:01:23 (YouTube, Oct. 25, 2021), <https://youtu.be/l-CjFtLwmSc?si=ZgPOiG5yFIqO8SJp&t=3654>.

²¹ See Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 292 (2023) (describing the ways eligible voters with criminal convictions are excluded from the ballot box).

²² QUENTIN SKINNER, *LIBERTY AS INDEPENDENCE: THE MAKING AND UNMASKING OF A POLITICAL IDEAL* 3-4 (2025).

²³ Instead of using the categories "de jure" and "de facto" to classify the exclusionary voter zoning, I use "physical" and "administrative." The latter taxonomy better aligns with how people are excluded from the vote than whether the barriers appear in a formal statute.

²⁴ See Page Dukes, *Ending Felony Disenfranchisement*, INQUEST (Jan. 20, 2026), <https://inquest.org/ending-felony-disenfranchisement>.

²⁵ Many people have delved into the issue of voter exclusion based on criminal convictions. For example, "Until We All Count," a short film Page Dukes directed that discusses the importance of voting rights and access to the ballot box through the words and experiences of people directly impacted by Georgia's voting ban and disenfranchisement

“registration requirements, lack of access to polling and registration venues, [and] voter identification requirements.”²⁶ This Article enlarges the list of barriers by looking at how prison and post-release policies restrict access to polling places and ballots. Discriminatory practices and maze-like procedures cause confusion, disinterest, fear, and distrust in the electoral and voting restoration processes for people with convictions. The application of zoning and public nuisance law to the voter exclusion of people with criminal convictions offers a new way of reviewing the relationship between the state and its residents.²⁷ This approach illuminates how the government signals, strongly, who belongs and who does not, as well as who is deemed invited into current and future political conversations and who is intentionally left off the ever important guest list for civic engagement.

This Article makes three contributions to voting rights scholarship. First, it exposes the spatial dimension of laws, policies, and regulations people with criminal records must follow should they seek to vote. In doing so, this Article identifies how voter exclusion by geography succeeds in the United States, reviewing the literal spaces and locked doors that stop eligible voters from voting. The spatial analysis this Article advances builds on a growing body of legal geography scholarship that has examined how place and space structure legal rights and legal exclusion. Legal geographers have documented how law “takes place,”²⁸ *i.e.*, how specific locations, boundaries, and spacing develops and spotlights legal importance.²⁹ Applying this framework to the voting context reveals what constitutional or criminal law analysis tends to miss: voter disenfranchisement is not only a legal status imposed on individuals but also a type of spatial arranging that sorts people

maze, including Dukes and Kareemah Hanifa. See REPRESENT JUSTICE, *Until We All Count*, at 0:43-2:10 (YouTube, Mar. 9, 2023), <https://youtu.be/WZRAIwW3Co?si=oN9dw0G7cYIesMrr>. See also Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 322 (2023) (explaining the different ways that people with convictions are excluded from the ballot box).

²⁶ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 *FLA. L. REV.* 287, 322 (2023).

²⁷ See STEPHANIE M. H. CAMP, *CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH* 6 (2004).

²⁸ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 1 (2014).

²⁹ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 1-3 (2014); DAVID DELANEY, *THE SPATIAL, THE LEGAL AND THE PRAGMATICS OF WORLD-MAKING: NOMOSPHERIC INVESTIGATIONS* 2-3 (2010); NICHOLAS BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* 3-4 (1994); see also Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 *AM. U. L. REV.* 863, 868-72 (2020) (analyzing as Black drivers risk criminalization because of their race).

into those who belong in political space and those who do not.³⁰

Second, this Article scrutinizes how public officials' conduct encourages fear and leads to the criminalization of the right of people with convictions to vote. Using property law, I demonstrate how state actors' language and actions construct the image of people with convictions voting as dangerous to public welfare.³¹ Third, this Article elaborates on the ethical critiques of voter exclusion based on criminal convictions and encourages the use of federal, state, and local protections to expand voting access.³²

To be clear, this Article argues neither that the right to vote is a property right nor that election and property laws are interchangeable. The goal is not to provide election litigation strategies to legal activists or model election law principles on property law. Rather, I analyze this issue through zoning laws to advance a new framing of voting policy. This analytical approach offers compelling evidence that the use of the police power determines the political citizenry.

The U.S. Supreme Court's April 29, 2026, decision in *Louisiana v. Callais*, intensifies the significance of this framing.³³ In a 6-3 decision, the Court held that Louisiana's congressional map creating a second majority-Black district was an unconstitutional racial gerrymander, and in doing so effectively gutted Section 2 of the Voting Rights Act.³⁴ As Justice Kagan observed in dissent, the majority's decision renders Section 2 "all but a dead letter;" the Court now requires plaintiffs to prove intentional racial discrimination rather than discriminatory effects.³⁵ *Callais* completes the

³⁰ See Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 ANN. REV. L. & SOC. SCI. 165, 167–68 (2020); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 679–80 (2020); Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 LAW & SOC'Y REV. 192, 193–94 (2024).

³¹ See IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, & ALEXANDRE KEDAR, *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 17 (2014).

³² See Rick Hasen, *Breaking: Eighth Circuit, on 2-1 Vote, Holds Private Plaintiffs Cannot Enforce Section 2 of the Voting Rights Act through a Section 1983 Action, a Ruling Which if Applied Nationally Would Devastate Voting Rights Act Enforcement in the United States*, ELECTION L. BLOG (May 14, 2025, 8:34 AM), <https://electionlawblog.org/?p=149897>; Franita Tolson, *The Spectrum of Congressional Authority over Elections*, 99 B.U. L. REV. 317, 323 (2019); Bryna Godar, *Disenfranchisement Creep*, 112 VA. L. REV. 577, 626–34 (2026) (proposing the use of state constitutional law to attack expansive voter exclusion on criminal conviction schemes in state courts).

³³ *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), judgment entered, 146 S. Ct. 1111 (2026).

³⁴ Sherrilyn Ifill, *SCOTUS Drops the Other Shoe on the Voting Rights Act*, SUBSTACK (Apr. 29, 2026), <https://sherrilyn.substack.com/p/scotus-drops-the-other-shoe-on-the>.

³⁵ *Louisiana v. Callais*, 146 S. Ct. 1131, 1190 (2026) (Kagan, J., dissenting). Justice Kagan characterized the majority as having "convert[ed] Section 2 into its opposite—a

dismantling of the federal statutory protections that previously constrained states' use of spatial tools, including district lines, geographic sorting, and place-based electoral arrangements, to dilute Black political power.³⁶ The *Callais* majority refuses to recognize that facially neutral spatial schemes produce racially disparate political outcomes, which this Article critiques.³⁷

This Article proceeds in three parts. In Part I, I explain the state's role and purpose in implementing zoning ordinances, while also delving into how zoning has allowed state and local governments to exclude communities, particularly Black people, from spaces and places to protect white communal and economic interests. Part II offers a brief history of mass incarceration in the United States and how states regulate voting access of people with a criminal conviction.³⁸ Then, I explain the physical and administrative restrictions people with criminal convictions face when voting because of

statute turning on discriminatory intent, not effects" and warned that the decision "threaten[ed] a half-century's worth of gains in voting equality." *Id.* at 1181, 1182.

³⁶ Pamela S. Karlan, *Bang, Bang, Bang: Callais Kills Off the Voting Rights Act*, JUST SECURITY (June 4, 2026), <https://www.justsecurity.org/140980/callais-kills-voting-rights-act/>; Richard L. Hasen, *The Supreme Court's Conservatives Just Issued the Worst Ruling in a Century*, SLATE (Apr. 29, 2026, 1:16 PM), https://slate.com/news-and-politics/2026/04/scotus-voting-rights-section-two-ruling-history-worst-century.html?gift_token=jaZQBomHRPCU5IpEpdFCYQ; Richard L. Hasen, *Breaking: On 6-3 Party Line Vote, Supreme Court Drastically Weakens Voting Rights Act in Callais Case to Make It Much Harder for Minority Plaintiffs to Get Fair Representation in Redistricting*, ELECTION L. BLOG (Apr. 29, 2026, 7:15 AM), <https://electionlawblog.org/?p=155728>. Along with *Callais*, scholars have noted that the Court's recent holding in *Mullin v. Doe* that Executive Branch's decision to end Temporary Protected Status for Haitian citizens living in the United States was due to racial animus "will make it even harder to prove racially discriminatory intent in voting and other cases." Richard Hasen, *Justice Alito Sanewashes Trump Comments About Haiti and Somalia Being a "Shithole" Countries, Calling Such Comments Previously "scandalized" "political discourse" but Not Racist; What It Means for Proving Discriminatory Intent in Voting Cases*, ELECTION L. BLOG (June 25, 2026), <https://electionlawblog.org/?p=156917>; Adam Serwer, *The Court That Will Believe Absolutely Anything Is 'Race-Neutral'*, THE ATL. (June 27, 2026), https://www.theatlantic.com/ideas/2026/06/scotus-asylum-racial-discrimination/687710/?gift=Je3D9AQS-C17IUTOnl2W8H_BlxOeZnlyrtUdlnOgfEE&utm_source=copy-link&utm_medium=social&utm_campaign=share.

³⁷ *Louisiana v. Callais*, 146 S. Ct. 1131, 1142-43 (2026) (Alito, J.) ("[A]llowing race to play any part in government decision-making represents a departure from the constitutional rule that applies in almost every other context."); James Sample, *5 Things to Know About the Supreme Court's Landmark Decision on the Voting Rights Act*, ABC NEWS (Apr. 29, 2026, 9:27 AM), <https://abcnews.com/Politics/5-things-supreme-courts-landmark-decision-voting-rights/story?id=131396119> (arguing that the majority's approach "treats the Constitution as forbidding the very race-conscious measures designed to fulfill its promises"); Joey Fishkin, *Must-Read Joey Fishkin: "It's All Politics,"* ELECTION L. BLOG (June 4, 2026, 6:54 AM), <https://electionlawblog.org/?p=156586>.

³⁸ *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974).

racialized and ostensibly race neutral discriminatory practices.

In Part III, the Article introduces how physical and administrative exclusionary voter zoning that states have implemented to support voter exclusion by geography fosters racial separation and voter disengagement for Black people on one side and elevates white community interests on the other. Then, I propose implementing inclusionary voter zoning, which requires removing physical and administrative barriers to voting for people with convictions and dismantling of voter exclusion schemes altogether. Inclusionary voter zoning does away with discrimination based on race and other characteristics and produces more just voting norms for society as a whole.³⁹

I. STATE POLICE POWER

The zoning of people with criminal convictions out of the electoral system is not incidental; it is a deliberate exercise of state police power. Understanding how states zone people out of the ballot box first requires knowing how states zone people out of certain spaces generally. Property ownership is a fundamental right purportedly protected by the U.S. Constitution.⁴⁰ People have the right to the unencumbered use of their private property, and the government may not interfere with people's enjoyment of their property without due process and compensation.⁴¹ The government, however, may regulate how people use their land through zoning laws and its police power.⁴² States have broad authority to regulate people and property in the name of public health, safety, and welfare.⁴³ This authority provides states with expansive power that they have used to preclude Black people and other people of color from accessing spaces deemed suitable only for more privileged white people.⁴⁴

³⁹ Errin Haines explained the meaning of voting and access to the ballot box in this way, "In America, to vote is to belong. May we continue our journey towards belonging, away from exclusion, so that the promise of liberty and equality becomes real across our United States." Errin Haines, *Her Grandparents Fought to Join American Democracy. She's Fighting to Complete It.*, THE 19TH NEWS (July 1, 2026, 12:17 PM), <https://19thnews.org/2026/07/revolutionary-america-250-voting-equality>.

⁴⁰ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

⁴¹ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1; PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (explaining that a property owner's right to use their property allows them to "serve their individual goals, and it allows for socially beneficial and economically desirable deployment of resources").

⁴² See, *infra* Part IA.

⁴³ *Berman v. Parker*, 348 U.S. 26, 33 (1954).

⁴⁴ See, *infra* Part IB.

A. Zoning for the Benefit of Public Health, Safety, & Welfare

Property owners expect the right to use their private property, without interference by other individuals and the government.⁴⁵ That right, however, is not unlimited; states and localities may enact laws and ordinances to restrict private property.⁴⁶ Zoning laws allow the government to regulate what type of functions and actions property owners may conduct on their property.⁴⁷

The Tenth Amendment of the U.S. Constitution reserves to the states the police power, which is a power of the sovereign.⁴⁸ In *Berman v. Parker*, the U.S. Supreme Court defined police power as “essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition.”⁴⁹ Under the power, state governments may enact laws and policies to address “[p]ublic safety, public health, morality, peace and quiet, law and order,” and so much more than the Court listed.⁵⁰ The Court has explained that “[t]he values [public welfare] represents are spiritual as well as physical, aesthetic as well as monetary.”⁵¹ This authority is expansive and may reach many areas of people’s lives. In the place and space context, the government implements zoning policies to promote economic prosperity, balance community needs,

⁴⁵ Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 [AMER. UNI. L. REV.](#) 863, 870 (2020) (“At its core, property law articulates the incidents, privileges, and limitations of ownership and use.”); *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (“An individual property owner has the right to make sure of her property and to have her property uses protected from interference by others.”).

⁴⁶ *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 239 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025).

⁴⁷ Christopher Serkin, *A Case of Zoning*, 96 [NOTRE DAME L. REV.](#) 749, 752 (2020) (describing zoning laws as “maintaining community character, enhancing property values, and allocating the costs of development between insiders and outsiders”); *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 347 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri, eds. 2025) (explaining that zoning involves creating districts that municipalities keep “separate from one another, with the use of property withing each district being mostly uniform”).

⁴⁸ U.S. CONST. amend. [X](#) (“The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

⁴⁹ *Berman v. Parker*, 348 U.S. 26, 32 ([1954](#)).

⁵⁰ *Id.* (noting that defining the scope of the police power was “fruitless” and dependent on the facts). State courts have upheld the inherent and broad control states have under their police power. *See, e.g.*, *T-Mobile W. LLC v. City & Cnty. of San Francisco*, 6 Cal. 5th 1107, 1116 ([2019](#)) (quoting *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal.4th 729, 738 (2013)); *Abdow v. Att’y Gen.*, 468 Mass. 478, 489 (2014).

⁵¹ *Id.* at 32-33. States, the Court determined, should have the ability to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled” and alleviate the public from the “spread [of] disease and crime and immorality.” *Id.*

protect the environment,⁵² and prioritize “family values.”⁵³ These tangible and intangible goals allow for broad application.

States’ usage of their expansive police power includes addressing public nuisances. A public nuisance is tangible property or an intangible item that unreasonably interferes with the general public’s rights.⁵⁴ A public nuisance is not necessarily a harmful thing; instead, it is something the government has deemed harmful in a particular location. The U.S. Supreme Court noted this distinction in *Village of Euclid v. Ambler Realty Co.* when it stated, “A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard.”⁵⁵ The Court does not reject the pig; it recognizes the state’s power to relocate it. What makes something a nuisance under the police power is its type and location. The nuisance’s presence in a space where the state has determined it does not belong is the issue.

Because of this calculation, the state does not need to establish that something is harmful altogether; it must establish that the item is harmful in a particular space and community.⁵⁶ And, to address that harm, the sovereign must exclude the nuisance from the protected space. Only when the state has removed the nuisance is that space restored to its respected status.

Though broad, the police power of the state has its limits.⁵⁷ State constitutions, explicit powers given to the federal government, and rights protected within the U.S. Constitution serve as guardrails against draconian state police power.⁵⁸ The government may not use its police power in an “arbitrary and unreasonable” manner with no “substantial relation to the public safety . . . or general welfare.”⁵⁹ Should the court find that a government law or ordinance falls within such restrictions, the policy will not stand; it would be a violation of the property owner’s due process rights under

⁵² PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 301-02 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025).

⁵³ *Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (“The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”).

⁵⁴ RESTATEMENT (SECOND) OF TORTS § 821B (AMER. L. INST. 1979).

⁵⁵ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926); Kellen Zale, *The Government’s Right to Destroy*, 47 [ARIZ. STATE L.J.](#) 269, 291-92 (2015).

⁵⁶ *Vill. of Euclid*, 272 U.S. at 388.

⁵⁷ *Eubank v. City of Richmond*, 226 U.S. 137, 143 (1912) (stating that the government’s police power is “always one of the least limitable”). See June Murray, *Constitutional Law—Limitations on Police Power*, 6 *BUFF. L. REV.* 42, 42-44 (1956).

⁵⁸ *Nectow v. City of Cambridge*, 277 U.S. 183, 188 (1928) (stating zoning power is “not unlimited”); *Belle Terre*, 416 U.S. at 6 (describing instances where an ordinance or law went beyond the police power).

⁵⁹ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926); *Nectow*, 277 U.S. at 187-88.

the Fourteenth Amendment.⁶⁰

Individuals have attempted to claim that states have exceeded their authority in numerous settings, yet the U.S. Supreme Court has emphasized regularly the almost unlimited nature of the police power. For example, in *Hadacheck v. Sebastian*, a property owner who used his land to make bricks was convicted of violating a Los Angeles ordinance that made manufacturing bricks in a particular area a misdemeanor offense and was sentenced to jailtime.⁶¹ The property owner filed a habeas corpus petition claiming that the city ordinance violated his Fourteenth Amendment rights.⁶² He argued that he had been manufacturing bricks on his land long before the city passed the ordinance, that the city was targeting him to remove competition and benefit other brickmakers, that his business operations were not health and safety issues, and that the city's actions were arbitrary.⁶³

In upholding the city ordinance, the Court stressed the vast extent of the city's police power and how limited the restrictions were on that power.⁶⁴ The U.S. Supreme Court recognized that one individual may experience harm because of the state's exercise of its police power, "but the imperative necessary for its existence precludes any limitation upon it when not exerted arbitrarily."⁶⁵ The police power allows for progress for the public, even at the expense of "private interests," and the state's power went beyond mitigating and addressing public nuisances.⁶⁶ As long as the state's policies were neither arbitrary nor unjustly discriminatory, their actions were not unconstitutional.⁶⁷

The Court noted that the property owner could still extract clay from his property, even if he had difficulty transporting the clay to another location to manufacture bricks; the city ordinance did not eliminate the property owner's use of his land overall.⁶⁸ Further, the Court reasoned that it would not invalidate the ordinance simply because the government could have used other means to regulate brickmaking in the district.⁶⁹ The state's police power is legitimate and assumed to be imposed in good faith.⁷⁰ Such a conclusion makes it easier for government officials to implement zoning provisions and harder for people to get courts to invalidate them.

⁶⁰ *Nectow*, 277 U.S. at 185.

⁶¹ *Hadacheck v. Sebastian*, 239 U.S. 394, 404-05 ([1915](#)).

⁶² *Id.* at 405-07.

⁶³ *Id.* at 406-07.

⁶⁴ *Id.* at 410.

⁶⁵ *Id.*

⁶⁶ *Id.* at 410-11.

⁶⁷ *Id.* at 411.

⁶⁸ *Id.* at 411-12.

⁶⁹ *Id.* at 413-14.

⁷⁰ *Id.* at 414.

And, across these cases, police power zoning appears to operate through a consistent structure. First, the state or municipality identifies a protected space whose character and welfare it wants to protect, for example a residential neighborhood or commercial district. It then identifies a threat that it characterizes as incompatible with that space's purported function or as a nuisance to those who belong there. Lastly, it uses spatial enforcement that removes the threat from the protected space and maintains the exclusion over time, through ordinances, prohibitions, and criminalization. This structure is the design of police power zoning, whether the protected space is a residential neighborhood and the threat is an industrial use, or the protected space is a political community and the threat is a category of people the state has decided do not belong within it.

B. Racism through Exclusionary Zoning

1. Racial Exclusion Through History

The United States has a long history of excluding Black people from public places and spaces. Beginning with enslavement, state and local governments ensured that Black people, whether enslaved or free, knew the literal and metaphorical boundaries of their movement and existence. For example, the 1857 Mississippi Slave Codes⁷¹ were specific in their racist requirements and demanded that white people enforce the laws “vigilantly.”⁷² The Codes placed on the enslaved person the burden of proving their innocence when charged with an offense, rather than the state.⁷³ The articles in the Code affirmed that enslaved people's actions were for the benefit of their enslavers⁷⁴ and that white people had the right to question any Black person they suspected of being in a space without permission or who was not following subordination norms and expectations.⁷⁵

Further, enslaved people had to be aware of how long they were in a public place, even when their enslavers had given them permission to be there, and who was around them.⁷⁶ For example, Article 42 banned an enslaved person from entering and remaining in a store with others for ten minutes; the assumption being that the enslaved person was up to no good if they stayed longer.⁷⁷ Along with outlawing rioting and trespassing, Article 50 made it illegal for an enslaved person to “use abusive, provoking or

⁷¹ MISS. CODE ANN. § 244-53 ([1857](#)).

⁷² MISS. CODE ANN. § 244 (1857).

⁷³ *Id.*

⁷⁴ MISS. CODE ANN. § 244 (1857).

⁷⁵ MISS. CODE ANN. § 244-47 (1857).

⁷⁶ MISS. CODE ANN. § 244-45 (1857).

⁷⁷ *Id.*

insulting language to any person not being a negro or mulatto.”⁷⁸ The law deemed Black people’s presence in public acceptable, but only if Black people did not offend white people’s sensibilities.

Notably, even free Black people could not be residents of Mississippi without permission.⁷⁹ They were not allowed to move freely between states and had to leave Mississippi within ten days if they were visiting.⁸⁰ The slave codes authorized white private citizens to sell free Black people into slavery for life if a free Black person failed to leave the state, according to Article 80.⁸¹ The proceeds of the sale of that formerly-free person into slavery went to the county.⁸² If a Black person wanted to travel to another county, they had to have evidence that they had permission to be in the state. Being caught without that documentation would lead to the person’s arrest.⁸³ If they are unable to provide proof within sixty days, they were to be sold into slavery, under Article 81 of the Code.⁸⁴ The Code made clear that were the free Black person traveling as a white person’s servant, then these restrictions did not apply to them; free Black people could travel freely for the benefit of white people.⁸⁵

The slave ordinances passed in Richmond, Virginia, demonstrate the way local governments restricted Black people’s movement and reinforced the social and legal stratification of Black people in the United States.⁸⁶ The slave ordinances passed in the 1850s made it illegal for Black people to walk in certain public spaces, including parks, required them to move out of the way of a white person walking on the sidewalk, and banned Black people from “insolent or menacing gestures” and “blasphemous or indecent” words around white people.⁸⁷ Black people’s movement and actions had to fit within prescribed norms, otherwise they were deemed criminal.⁸⁸ Accordingly, during slavery, government laws and unwritten norms dictated where Black people could go and what little access they could have to land ownership; people who were enslaved were under the control of white people, especially

⁷⁸ MISS. CODE ANN. § 247 (1857).

⁷⁹ MISS. CODE ANN. § 253 (1857).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ MISS. CODE ANN. § 253 (1857).

⁸⁶ A RICHMOND READER, 1733-1983 107-113 (Maurice Duke & Daniel P. Jordan eds., 1983).

⁸⁷ *Id.*

⁸⁸ See, e.g., *Pass Permitting Travel by an Enslaved Man from Montpelier*, ENCYCLOPEDIA VA., <https://encyclopediavirginia.org/151-tif> (last visited Jan. 28, 2026) (displaying a pass enslaved people had to carry to confirm they had permission to leave the plantation).

landowning and wealthy white people.⁸⁹

After the U.S. Civil War and during the subsequent Reconstruction period, Congress passed legislation and constitutional amendments that were supposed to abolish racial discrimination and offer equal treatment for Black people under the law.⁹⁰ State and local government officials, however, still excluded Black communities for property and places.⁹¹ Through the use of law and language, the state found ways to degrade Black people even though the law had purported to make them free. Black people were excluded from owning and using land, and, when they overcame such barriers, the parcels of land they acquired were the least desirable.⁹² Government agencies made promises of land and freedom to newly-freed Black men and their families, but those efforts benefitted white communities more so.⁹³

⁸⁹ STEPHANIE M. H. CAMP, *CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH* 16 (2004) (explaining that the success of the “principles of restraint that criminalized and enslaved slave movement” depended on the state to implement the laws that benefitted enslavers).

⁹⁰ *Reconstruction in America: Racial Violence after the Civil War, 1865-1876*, EQUAL JUST. INITIATIVE (2020), <https://eji.org/report/reconstruction-in-america>.

⁹¹ Saidiya Hartman describes emancipation as a “nonevent;” she argues that Black people endured the “afterlife of slavery.” SAIDIYA HARTMAN, *THE HOLD OF SLAVERY* 5 (updated ed. 2022) (“The conviction that I was living in the world created by slavery propelled the writing of . . . my first book The hold of slavery was what I sought to articulate and convey.”); Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 [SETON HALL L. REV.](#) 201, 208, 222 (2025) (examining Saidiya Hartman’s afterlife of slavery concept).

⁹² Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common*, 95 [NW. U. L. REV.](#) 505, 525-27 (2001); Roy W. Copeland, *The Rise and Fall of Black Real Property Ownership: A Review of Black Land Ownership from the Rough Beginnings to the Great Gains; Dispossession via the Use of Legal Tactics and the Push for Black Land Retention*, 9 [BLACK L.J.](#) 51, 52-53 (1984); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 [PUB. AFFS. Q.](#) 255, 260-63 (2007). The first racial zoning case, *In re Lee Sing*, 43 F. 359 (N.D. Cal. 1890), was regarding a local ordinance that ordered people of Chinese descent to leave the city and county of San Francisco, California. *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 14 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri eds., 2025). The court held that the ordinance went beyond “any legitimate police power of the state.” *In re Lee Sing*, 43 F. at 362. After the invalidation of the ordinance in *In re Lee Sing*, local and state governments continued to pass racial exclusionary zoning policies. *THE RIGHT TO FAIR HOUSING* at 17. Accordingly, “Baltimore was the first jurisdiction to direct such ordinances at Black people.” *Id.* at 18.

⁹³ Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common*, 95 [NW. U. L. REV.](#) 505, 525-27 (2001) (describing how white people represented the majority of applicants that the government promised Black men and obstacles Black applicants endured in attempting to obtain land); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 [PUB. AFFS. Q.](#) 255, 260

The infamous 1896 case, *Plessy v. Ferguson*, illustrated how the U.S. Supreme Court allowed states to regulate spaces based on race and white supremacy.⁹⁴ Plessy, a Black man, argued that Louisiana's law requiring Black and white people sit in separate railroad cars violated the Equal Protection Clause of the Fourteenth Amendment.⁹⁵ In ruling for the state, the Court held that separation by race was not unconstitutional as long as the accommodations were equal.⁹⁶ The decision not only "solidified racial separation in public and private life,"⁹⁷ but it also served an expansive role in how the state, judiciary, and private individuals defined roles and interacted based on race and racial status.⁹⁸ The decision's logic did not end with transportation; it migrated into every domain where the state had authority to regulate space and place.

Even as the U.S. Supreme Court banned government authorities from implementing racial zoning⁹⁹—which explicitly separate property and accommodations based on race¹⁰⁰—and judicially enforcing racial covenants—which are agreements between private parties restricting who property owners may sell land to based on race,¹⁰¹ researchers have determined that exclusionary zoning "has survived many court challenges and remains widespread today."¹⁰² As the formal tools of explicit racial

(2007) (explaining state and municipal government efforts to regulate access to certain neighborhoods by race).

⁹⁴ *Plessy v. Ferguson*, 163 U.S. 537, 563-64 (1896).

⁹⁵ *Id.* at 541-42.

⁹⁶ *Id.* at 549.

⁹⁷ John A. Powell et al., *Introduction to the Issue*, 7 RSF: RUSSELL SAGE FOUND. J. SOC. SCIENCE, 6 (2021), <https://www.rsffournal.org/content/rsfjss/7/1/1.full.pdf>.

⁹⁸ *Id.* at 2. ("Related issues that are part and parcel to the decision include definitions of whiteness and the relationship between white spaces and black bodies; the creation and sustaining of state-supported institutions; definitions of race and citizenship; and the role of the Court in creating, sustaining, or reversing social systems that reproduce racism, racial discrimination, and racial inequality.").

⁹⁹ *Buchanan v. Warley*, 245 U.S. 60, 82 (1917) (holding that a city ordinance banning people from buying real property based on race was not a legitimate exercise of the police power of the State, and "unconstitutional under the Fourteenth Amendment").

¹⁰⁰ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (finding that "[s]eparate educational facilities are inherently unequal" and leading to holdings that segregation laws were unconstitutional).

¹⁰¹ *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (holding that government agencies may not enforce racial covenants).

¹⁰² Matthew Mleczko & Matthew Desmond, *Using Natural Language Processing to Construct a National Zoning and Land Use Database*, 60 *URB. STUD.* 2564, 2566 (2023); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA X-XIII*, 48-54 (2017). In *Arlington Heights*, the U.S. Supreme Court held that race-based discrimination claims under the Fourteenth Amendment require proof of discriminatory intent, which is difficult to achieve. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270-71 (1977). Upon remand, the U.S. Court of

separation became vulnerable, states and municipalities adapted how they achieved their goals. Race-neutral zoning law became the prevailing instrument for the same spatial exclusion that *Plessy* had authorized explicitly. The protected spaces remained white. The sovereign now defined threats as economic or aesthetic rather than racial. The enforcement mechanisms were now zoning ordinances rather than segregation statutes. The structure was identical; only the terminology had changed.¹⁰³

2. The Racial Tool of Exclusionary Zoning

The extent of the police power allows states to regulate places and spaces broadly in the form of exclusionary zoning. Unfortunately, even though the power and the goals of zoning laws appear race-neutral and directed at land *use* in the post-Civil Rights era, state and municipal government have used their authority to exclude and control *people* based on race and other identities.¹⁰⁴ Access to land is not neutral; zoning and property laws necessarily aim to categorize and separate.¹⁰⁵ Legal scholars have described how states' use of their police power includes explicitly and implicitly keeping people and communities out of certain cities and areas.¹⁰⁶ While not

Appeals for the Seventh Circuit held that plaintiffs could establish violations of the Fair Housing Act “by a showing of discriminatory effect without a showing of discriminatory intent.” *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977). As such, today, claimants use the Fair Housing Act and its regulations’ disparate impact standard to prove that a race-neutral land use and housing practice is discriminatory. *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 534, 540-46 (2015) (holding that the Fair Housing Act allows disparate-impact claims and also explaining limitations to bringing such claims); see also *Understanding Disparate Impact in Housing*, ALLIANCE FOR HOUS. JUST. (Apr. 30, 2025), <https://www.allianceforhousingjustice.org/post/understanding-disparate-impact>; Leigh Poltrock et. al., *HUD Proposes to Rescind Fair Housing Act Disparate Impact Regulations*, CONSUMER FIN. SERVICES L. MONITOR (Jan. 16, 2026), <https://www.consumerfinancialserviceslawmonitor.com/2026/01/hud-proposes-to-rescind-fair-housing-act-disparate-impact-regulations>.

¹⁰³ Though analyzing the “Old South,” Stephanie M. H. Camp’s argument that “the privilege of locomotion was integral to freedom, just as its denial was an element of enslavement” rings true for state and private acts that limit Black people’s movement.

¹⁰⁴ Michael Allen Wolfe, *Goodbye, Zoning?*, 78 *VAND. L. REV.* 1077, 1083 (2025) (“Exclusionary zoning practices only serve to exacerbate separation by race and income, which in turn widens the education, housing, and wealth gaps.”); *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (barring government enforcement of racially restrictive covenants).

¹⁰⁵ See *PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS* 302 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas, eds. 2025).

¹⁰⁶ See Andrew H. Whittemore, *Exclusionary Zoning: Origins, Open Suburbs, and Contemporary Debates*, 87 *J. OF THE AMER. PLANNING ASSOC’N* 167, 168-69 (2020) (describing the history of exclusionary zoning in city planning and methods used to advocate against it); Matthew Mleczko & Matthew Desmond, *Using Natural Language Processing to Construct a National Zoning and Land Use Database*, 60 *URB. STUD.* 2564, 2566 (2023)

always stated as such, the application of exclusionary zoning laws and practices direct if, how, and when certain people may or may not access, own, and use property.¹⁰⁷ This exclusion establishes and furthers the distinction between the worthy and unworthy.¹⁰⁸ State and local governments around the nation have used and continue to use their police power to establish status levels based on race and other systemically excluded community identities; these rankings determine access to entry, ownership, and free movement within the broader community. Officials undertake these exclusionary zoning practices to the benefit of the state's prioritized citizens: wealthy white people.¹⁰⁹

(noting how municipalities used zoning in race-neutral ways originally, but quickly implemented policies “co-opted for exclusionary ends”); Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in Its Place: Affordable Housing and Geographical Scale*, 40 [FORDHAM URB. L. J.](#) 1667, 1668 (2013) (including urban and suburban zoning efforts in the definition of “exclusionary zoning”).

¹⁰⁷ Reva B. Siegel noted, “[O]ne needs a concept of social stratification-of status inequality among groups arising out of the interaction of social structure and social meaning-in order to make sense of the blindness trope at the heart of antidiscrimination law.” Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CAL. L. REV. 77, 77 (2000). For example, Jamila E. Jefferson’s article, “*Driving While Black*” as “*Living While Black*,” explains how driving and traffic laws regulate Black people’s movement. Jamila E. Jefferson, “*Driving While Black*” as “*Living While Black*,” 106 IOWA L. REV. 2281, 2295 (2021). In *Anti-Segregation Policing*, Monica C. Bell delved into the intersection between residential segregation and policing by investigating how noncriminal police tactics regulated where Black families live and vice versa. Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (“[P]olicing is one of many mechanisms that reinforce segregation, mechanisms that segregation reinforces in turn.”). Ana Muñiz demonstrated that Los Angeles state actors used injunctions against alleged gang members as “a tool of displacement rather than confinement—a way to rid populations from target areas.” ANA MUÑIZ, POLICE, POWER, AND THE PRODUCTION OF RACIAL BOUNDARIES 79 (2015) (analyzing how Los Angeles politicians, police, and white residents pushed for the municipality’s first gang injunction to criminalize usually legal acts and keep Black people out of white neighborhoods). Muñiz explained that the fear of Black boys in white rich neighborhoods led police officers and Los Angeles government lawyers to turn “the term ‘gang’” as a signal for “[B]lack men” *Id.* at 45. Instead of place, other scholars have analyzed how states have criminalized tattoos associated with particular communities. Beth Caldwell, *Reifying Injustice: Using Culturally Specific Tattoos as a Marker of Gang Membership*, 98 WASH. L. REV. 787, 791 (2023). And others have looked at and rap music. *See generally*, ANDREA L. DENNIS AND ERIK NIELSON, RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA (analyzing the use of rap lyrics in criminal cases) (2019); Charis E. Kubrin et. al., *Rap Rhyme, Prison Time: How Prosecutors Use Rap Evidence in Gang Cases*, 27 [CHAP. L. REV.](#) 369, 376 (2024) (same).

¹⁰⁸ Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CAL. L. REV. 77, 77 (2000); PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 311 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas, eds. 2025).

¹⁰⁹ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 194 (2024) (“Central to the

Various scholars have explained how hard it is for Black communities and other systemically excluded communities to protect their property rights, access property ownership, and be in certain places because of zoning regulation.¹¹⁰ For example, in *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, Deborah Archer demonstrates how state and local government use laws and policies to weaken Black communities and other communities of color, move Black households out of particular regions, and regulate their movement using laws that did not mention race, but impacted racial groups disproportionately.¹¹¹ The federal government supported race-neutral policies and programs that aimed to segregate neighborhoods by race and diminish Black people's quality of housing and property ownership.¹¹²

Court decisions in the Jim Crow era have recognized or enhanced the power of local governments to enact exclusionary zoning laws to the detriment of Black communities. For example, in 1926, in *Village of Euclid v. Ambler Realty*,¹¹³ the U.S. Supreme Court allowed jurisdictions to use their police power to zone separate single- and two-family residential districts, which, in concert with racial covenants and discrimination in providing housing financing, fueled segregation in housing.¹¹⁴ The ordinances allowed

policing function is the legal authority to control who is allowed to occupy certain spaces--a practice that is deeply racialized.”); Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay> (“Government decisions about zoning, permitting, and environmental regulation illuminate the vast scope of the police power and the thousand ways it touches the fabric of our lives.”).

¹¹⁰ See Andrew H. Whittemore, *Racial and Class Bias in Zoning: Rezoning Involving Heavy Commercial and Industrial Land Use in Durham (NC), 1945–2014*, 83 J. AMER. PLAN. ASSOC’N 235, 240 (2017). For a more land-focused discussion, see Avi Brisman, *Toward A More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 283, 293 (2007) (arguing that environmental rights advocates collaborate with people working to end state voter exclusion based on criminal convictions schemes to increase the electoral power of those seeking to address societal problems); Avi Brisman, *Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment*, 28 WM. & MARY ENVTL. L. & POL’Y REV. 423, 431 (2004) (“[I]f these laws [that exclude people with convictions from society] contribute to recidivism, and if crime is an impediment to sustainable development, then these laws impede sustainable development.”).

¹¹¹ Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173, 208 (2019).

¹¹² Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225, 1231 (2023); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 PUB. AFFS. Q. 255, 260-62 (2007) (examining federal government lending policies that supported housing racial segregation).

¹¹³ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 396-97 (1926).

¹¹⁴ See also Sarah J. Adams-Schoen, *The White Supremacist Structure of American*

jurisdictions to set up housing requirements available only to white wealthy families.¹¹⁵

One 1975 N.J. Supreme Court case, *Southern Burlington County NAACP v. Township of Mount Laurel*, demonstrated how local government officials attempted and failed to use race-neutral zoning policies to ensure only particular people lived in the municipality.¹¹⁶ The municipality passed specific ordinances that aimed to attract wealthy residents¹¹⁷ and made it “physically and economically impossible” for individuals of low and moderate incomes to find housing.¹¹⁸ The N.J. Supreme Court held that such targeted zoning policies were unconstitutional and that “municipalities must zone primarily for the living welfare of people and not for the benefit of the local tax rate.”¹¹⁹ In this case, the court seemed to find that the zoning ordinances hurt the public welfare.¹²⁰

In other instances, however, states have used and continue to use their police power to “banish” people of color and other systemically excluded groups from public spaces and private land.¹²¹ Police power “maroon[s] certain groups of people outside the protection of the police power.”¹²² The

Zoning Law, 88 [BROOK. L. REV.](#) 1225, 1275-76 (2023) [noting the impact of the U.S. Supreme Court’s decision in furthering exclusionary zoning]; Jade A. Craig, “Pigs in the Parlor”: *The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 [MISS. C. L. REV.](#) 5, 9 (2022) (“These areas became the “barnyards” to which cities relegated African Americans while traditional single-family, single-use residential districts—the “parlors” of both a racial zoning ordinance and the general zoning ordinances that followed—were reserved for wealthy or upper class whites.”).

¹¹⁵ Jade A. Craig, “Pigs in the Parlor”: *The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 [MISS. C. L. REV.](#) 5, 9 (2022).

¹¹⁶ *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 159 (1975) (stating that plaintiffs in the lawsuit represented Black and Hispanic or Latine people in poverty but extending the court’s discussion to people prevented from “living the township because of the limited extent of their income and resources”). Though agreeing that the ordinances were discriminatory, the state court “accepted” that Mount Laurel did not pass its land use regulations with a racial intent. *Id.*

¹¹⁷ *Id.* at 167.

¹¹⁸ *Id.* at 173.

¹¹⁹ *Id.* at 188.

¹²⁰ *Id.*; see also *Surrick v. Zoning Hearing Bd. of Upper Providence Twp.*, 476 Pa. 182, 193-196 (1977) (holding that a township’s restriction on multi-family dwellings had an exclusionary impact such that the township must grant zoning approval for the developer seeking to build apartments and townhouses).

¹²¹ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 194 (2024). A recent U.S. Supreme Court decision, *City of Grants Pass v. Johnson*, upheld a jurisdiction’s authority to zone people experiencing homelessness out of public spaces and places. *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 560-61 (2024).

¹²² Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power->

use of the police power in this way deems a space white to the exclusion of Black people, people of color, and other systemically excluded communities.¹²³ As Cheryl I. Harris noted in *Whiteness as Property*, whiteness became property protected by laws and policies and property that protected racism and power.¹²⁴

The continuous signaling of a certain space as worthy of protection and of particular groups as being unable to access that space is what philosopher Henri Lefebvre termed “spatial practice.”¹²⁵ As Lefebvre reasons, spatial practice “embraces production and reproduction, and the particular locations and spatial sets characteristic of each social formation.”¹²⁶ Spatial practice dictates who may enter a location, how people must behave, and who are the priorities.¹²⁷ White communities prevail because of this spatial practice; through this exclusion, white people’s interests and comforts take priority.¹²⁸

The spatial practice that has defined who belongs in a neighborhood, who may walk on a sidewalk, and who may sit in a railroad car, does not stop at the voting booth’s door. As Part II demonstrates below, the same construction of a protected space, the same definition of a group as threatening to that

[public-safety-essay](#) (examining how under-policing in Black neighborhoods signals a disinterest and neglect from the state).

¹²³ Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, *Governing the Belongings of the Precariously Housed: A Critical Legal Geography*, 16 [ANN. REV. L. & SOC. SCI.](#) 165, 172-73 (2020) (exploring how “legal governance” regulates people through their property and behaviors in spaces); Roy W. Copeland, *The Rise and Fall of Black Real Property Ownership: A Review of Black Land Ownership from the Rough Beginnings to the Great Gains; Dispossession via the Use of Legal Tactics and the Push for Black Land Retention*, 9 [BLACK L. J.](#) 51, 52-53 (1984) (explaining that Black people were expected to “keep” or “know” their place after the banning of slavery and Black people’s attempts to own land).

¹²⁴ Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1709 (1993).

¹²⁵ HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* 33 (Donald Nicholson-Smith trans., 1991); see also Monica C. Bell, *Anti-Segregation Policing*, 95 [N.Y.U. L. REV.](#) 650, 679 (2020) (explaining how Black people felt excluded from certain spaces because of police practices); Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 [AM. U. L. REV.](#) 863, 870 (2020) (“This casting of Blackness as a property harm—an interference with existing (white) property entitlements—is a deep-seated phenomenon that has been pervasive throughout U.S. history.”).

¹²⁶ HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* 33 (Donald Nicholson-Smith trans., 1991); see Ariel Aberg-Riger, *What is Loitering, Really?*, BLOOMBERG (May 21, 2018, 6:00 AM), <https://www.bloomberg.com/news/articles/2018-05-21/what-is-loitering-really>.

¹²⁷ Roland Neil & Joscha Legewie, *Policing Neighborhood Boundaries and the Racialized Social Control of Spaces*, 58 [L. & SOC’Y REV.](#) 192, 193 (2024) (noting that police power “influences societal interactions and reinforces racial stratification”).

¹²⁸ Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1709 (1993); see Dylan C. Penningroth, *Police Power Affects All of Us*, TIME (May 1, 2025, 6:30 AM), <https://time.com/collections/george-floyd-america-reflection/7280515/police-power-public-safety-essay>.

space's order, and the same use of law to enforce the exclusion all operate in the voting context. This exclusionary voter zoning process produces and reinforces racial hierarchy through the disenfranchisement of people with criminal convictions.

II. MAP OF DISENFRANCHISEMENT: VOTER EXCLUSION BY GEOGRAPHY AS SPATIAL STRUCTURAL RACISM

Zoning Black people out of the ballot box is not a new endeavor.¹²⁹ Throughout this country's history, people have banned Black communities from voting or made it so difficult to vote that the turnout in the Black community was low, if not zero.¹³⁰ From enslavement to criminalization, physical exclusions to administrative barriers, state actors and private citizens have used the police, violence, and intimidation to restrict Black people's participation in the political process.¹³¹ Using voter exclusion based on criminal convictions today, states have employed another way of keeping Black communities out of exercising their political rights.¹³²

Other scholars have begun to map the geographic dimensions of political representation, and the U.S. Supreme Court's recent decision in *Louisiana v. Callais* makes that delineation urgent.¹³³ Doug Spencer analyzed what he calls "electoral maintenance," which is the ongoing governmental choices about districting, polling locations, registration deadlines, and ballot design that determine not just who may vote but also how accessible voting actually is for different communities.¹³⁴ Spencer's article reveals that geography is not neutral in electoral administration; the decisions that shape physical and procedural voting processes advantage some communities over others.¹³⁵ This Article extends Spencer's analysis from the administration of elections generally to the specific population. Voter exclusion based on criminal convictions occurs when states ban people from voting after they have been convicted of a criminal offense, and this Article explains that, for people with criminal convictions, disenfranchisement schemes embed structural space and place barriers to regulate their voting access. The argument developed

¹²⁹ See generally Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431 (2022).

¹³⁰ *Id.* at 2447.

¹³¹ Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 [STAN. L. REV.](#) 1271, 1295 (2004).

¹³² In *Black Women & Voter Suppression*, I argued that voter exclusion based on criminal convictions has continued the history disenfranchising Black women, in particular, and their families and communities. See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431, 2439-40 (2022).

¹³³ *Louisiana v. Callais*, 146 S. Ct. 1131, 1143 (2026).

¹³⁴ Doug M. Spencer, *Electoral Maintenance*, 103 [B.U. L. REV.](#) 2199, 2201-04 (2023).

¹³⁵ *Id.* at 2212.

here is not a litigation strategy under existing federal law. It is an analytical framework for understanding and challenging the spatial design of voter exclusion through legislative, policy, and state-law channels that may remain open.

Within exclusionary voter zoning is voter exclusion by geography, which occurs when people's location and space determine their voter eligibility. While state laws vary across many areas, for example contracts, torts, and property requirements, geographic voting is different because it serves as a mechanism through which people hold the state itself accountable. When a citizen's ability to participate in federal democracy depends on which side of a state line they live, the geographic variation is a determination about who belongs to the national political community and who does not. The same person, with the same conviction, for the same conduct, is a full member of the federal democratic community in Maine and excluded in Florida.¹³⁶ Geography does not explain this difference, but power does. The state's authority to define the electorate, like its authority to zone residential neighborhoods, is an authority that it has used to protect political interests in the name of the public welfare.

Even though U.S. Supreme Court decisions have deemed the political franchise a fundamental right¹³⁷ and society considers voting a crucial act within society,¹³⁸ a person's location determines whether they may have access to that right at all. It determines their ability to vote. One criminal offense may take away a person's right to vote in one state and have no impact on a person's voting right in another. For example, a resident of Maine serving a criminal sentence on a felony conviction never loses their voting rights because of a conviction.¹³⁹ A resident of New York convicted of a

¹³⁶ *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUST. 1, 2, 6 (2026), <https://www.brennancenter.org/media/15740/download/2026.06.05-bc-criminal-disenfranchisement-laws-map-1.pdf?inline=1>.

¹³⁷ See *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (“[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (declaring that voting is a “fundamental political right” that protects all other rights).

¹³⁸ Benjamin Plener Cover, *Voter Fraud Mistake* 33 *WM & MARY BILL OF RTS. J.* 1, 14 n.69 (2025) (describing Brian Pinaire et al., *Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons*, 30 *FORDHAM URB. L. J.* 1519, 1533-34 (2003) (“noting that 93.2% of survey respondents believe that the right to vote is either the most important or one of the most important rights in a democracy”).

¹³⁹ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 20 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

felony is eligible to vote automatically upon release from prison.¹⁴⁰ An Alabama resident must request a Certificate of Eligibility to Register to Vote from the Alabama Board of Pardons and Paroles (ABPP) if they are convicted of any “crimes of moral turpitude,”¹⁴¹ but a person convicted of certain enumerated offenses within the moral turpitude category may never obtain their voting rights back unless the ABPP pardons them.¹⁴²

While voter exclusion by geography critiques and compares political franchise access across states, I use the term “disenfranchisement maze” to expose the web of laws and policies that people must follow in the hopes of restoring their voting rights within a particular jurisdiction. The maze begins as soon as a person is held in jail pending trial. Traveling the disenfranchisement maze may continue throughout a person’s detention, post-supervisory release, and beyond. Within a state, the ban on people voting may depend on their incarceration status, whether they have post-incarceration restrictions, the type of crime they were convicted of, and when they were convicted of that crime.¹⁴³ One person convicted in Tennessee may be able to vote, and another Tennessean convicted of the same crime may not be able to vote because their convictions occurred in different years.¹⁴⁴

States could abolish voter exclusion based on criminal convictions, like Vermont, Maine, DC, and Puerto Rico have done, but, instead, many choose to strengthen and enforce these laws and procedures and the stigma.¹⁴⁵ In

¹⁴⁰ Dinesh Napal et al., *New York Should Restore Voting Rights to Over 33,000 Citizens*, THE SENT’G PROJECT, 1 (2025), <https://www.sentencingproject.org/app/uploads/2025/04/New-York-Should-Restore-Voting-Rights-to-Over-33000-Citizens.pdf>.

¹⁴¹ ALA. CONST. art. VIII, § 177; ALA. CODE § 17-3-30.1, 17-3-31

¹⁴² ALA. CODE § 17-3-31; *Voting Rights: Certificate of Eligibility to Register to Vote*, ALA. BUREAU OF PARDONS & PAROLES, 1 (2025), <https://paroles.alabama.gov/wp-content/uploads/Voting-Rights-Final-Version.pdf> (outlining the Alabama statutes limit voting access and the process to restore voting rights).

¹⁴³ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹⁴⁴ People convicted before or on May 17, 1981, did not lose their political franchise, but those convicted after that date did. *Restoration of Voting Rights*, TENN. SEC’Y OF ST., <https://sos.tn.gov/elections/guides/restoration-of-voting-rights> (last visited Mar. 1, 2026); Press Release, Campaign Legal Ctr., VICTORY: Federal Court Affirms That Tennessee Election Officials Cannot Deny Voter Registration to Eligible Tennesseans with Past Felony Convictions, Must Inform Potential Voters of Eligibility (Apr. 19, 2024), <https://campaignlegal.org/press-releases/victory-federal-court-affirms-tennessee-election-officials-cannot-deny-voter>.

¹⁴⁵ See Dinesh Napal et al., *New York Should Restore Voting Rights to Over 33,000 Citizens*, THE SENT’G PROJECT, 1-3 (2025), <https://www.sentencingproject.org/app/uploads/2025/04/New-York-Should-Restore-Voting-Rights-to-Over-33000-Citizens.pdf>.

most cases, states limit the ban to felony convictions; usually, a person does not lose their right to vote if they are convicted of a misdemeanor.¹⁴⁶ Historical records indicate that voter bans proliferated after Reconstruction when former confederate soldiers wanted to disenfranchise Black men without violating the Fourteenth and Fifteenth Amendments.¹⁴⁷ They created and targeted crimes that they believed Black men were more likely to commit.¹⁴⁸ That historical racism continues today, though not so blatantly. The U.S. Supreme Court has held that states' use of voter exclusion schemes does not violate the Fourteenth Amendment's Equal Protection Clause.¹⁴⁹ The intersection between mass incarceration and criminal disenfranchisement, particularly of Black people, is hard to ignore based on the data. Currently, mass incarceration and voter exclusion based on criminal convictions ban four million people from voting.¹⁵⁰ The Sentencing Project's *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction* provides detailed examples and data to explain the impact. It notes that states, especially those in the South, have high rates of voter exclusion based on criminal conviction rates disproportionate to the demographic rates of Black people in those states.¹⁵¹

As in the case of prison gerrymandering, where and how the government counts people demonstrates another form of exclusion. Prison gerrymandering is when a person is counted as a resident of the jurisdiction

[Voting-Rights-to-Over-33000-Citizens.pdf](#) (advocating for the universal suffrage in New York because of the state's racist history of voter exclusion, its disproportionate impact on people of color, and the strengthening of democracy by doing so).

¹⁴⁶ When a conviction is an election law related offense, like bribery or voter fraud, certain states ban a person from voting no matter whether it is a misdemeanor or felony offense. See *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGIS., <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> (Aug. 19, 2025).

¹⁴⁷ See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U.L. REV.](#) 2431, 2451 (2022).

¹⁴⁸ Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 222-23 (2025).

¹⁴⁹ *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). Federal appellate courts have applied the rational basis standard to review Equal Protection claims related to voter exclusion based on criminal convictions. See *Hayden v. Paterson*, 594 F.3d 150, 170 (2d Cir. 2010); *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983); *Hawkins v. Youngkin*, 149 F.4th 433, 443-44 (4th Cir. 2025), *cert. denied sub nom. Hawkins v. Spanberger*, 146 S. Ct. 1642 (2026); *Williams v. Taylor*, 677 F.2d 510, 514 (5th Cir. 1982); *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.); *Jones v. Governor of Fla.*, 975 F.3d 1016, 1029-30 (11th Cir. 2020) (en banc).

¹⁵⁰ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT'G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>.

¹⁵¹ *Id.*

they are incarcerated in, rather than their home addresses for purposes of drawing voting districts.¹⁵² This practice benefits rural localities where the prisons are, to the detriment of the people's hometowns.¹⁵³

While people's locations matter in both instances, prison gerrymandering and racial gerrymandering differ. While the former removes people who are incarcerated from their district of resident, the latter allows for the "manipulating [of] election maps in ways that favor particular outcomes" based on racial demographics.¹⁵⁴ Racial gerrymandering dilutes the voting power of eligible voters, which harms communities of color the most. Analysis of the recent U.S. Supreme Court case, *Louisiana v. Callais*,¹⁵⁵ confirms that this voter dilution, especially of Black voters, will increase as state legislators redraw voting district maps.¹⁵⁶

Along with explicit bans, under de facto disenfranchisement, state laws and policies cause people with criminal convictions and their family members

¹⁵² Aleks Kajstura, *An End to Prison Gerrymandering? Not in the 2030 Census*, PRISON POL'Y INITIATIVE (Apr. 1, 2026), <https://www.prisonersofthecensus.org/news/2026/04/01/2030-census-prep>; *Prison Gerrymandering Project: The Problem*, PRISON POL'Y INITIATIVE, <https://www.prisonersofthecensus.org/impact.html> (last visited Jun. 26, 2026); Peter Wagner and Daniel Kopf, *The Racial Geography of Mass Incarceration*, PRISON POL'Y INITIATIVE (2015), <https://www.prisonpolicy.org/racialgeography/report.html>.

¹⁵³ *Prison Gerrymandering Project*, PRISON POL'Y INITIATIVE, <https://www.prisonersofthecensus.org> (last visited May 1, 2026).

¹⁵⁴ Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST. (May 14, 2026), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained>.

¹⁵⁵ *Louisiana v. Callais*, 146 S. Ct. 1131, 1143 (2026).

¹⁵⁶ Nick Corasaniti, *Voting Rights Ruling Could Fuel Era of Endless Redistricting Wars*, N.Y. TIMES (Apr. 30, 2026), <https://www.nytimes.com/2026/04/30/us/politics/supreme-courts-voting-rights-gerrymandering.html>; Rachel Leingang, *Push for State-Level Voting Rights Acts Renewed After Supreme Court Ruling*, GUARDIAN (May 1, 2026, 10:00 AM), <https://www.theguardian.com/us-news/2026/may/01/state-voting-rights-acts-supreme-court-ruling>. Scholars and advocates have explained that the U.S. Supreme Court in *Callais* has heightened the proof plaintiffs must show under Section 2 of the Voting Rights Act of 1965 to win lawsuits claiming racial gerrymandering in the way states redraw voter maps. Pamela S. Karlan, *Bang, Bang, Bang: Callais Kills Off the Voting Rights Act*, JUST SECURITY (June 4, 2026), <https://www.justsecurity.org/140980/callais-kills-voting-rights-act>; *What Louisiana v. Callais Means for the Voting Rights Act*, HARV. KENNEDY SCH. (Apr. 30, 2026), <https://www.hks.harvard.edu/faculty-research/policy-topics/fairness-justice/what-louisiana-v-callais-means-voting-rights-act>. Essentially, the *Callais* decision has "made it all but impossible" for plaintiffs to meet the test the Court imposed in *Thornburg v. Gingles*, 478 US 30 (1986), to show the states' redistricting was racially motivated. Kareem Crayton, *The Voting Rights Act, Explained*, BRENNAN CTR. FOR JUST. (April 29, 2026), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-explained>; Bertrall L. Ross II, *The Return of Pretexualism: How Callais Hollowed Out the Voting Rights Act*, CAL. L. REV. ONLINE (July 2026), <https://www.californialawreview.org/online/pretextualism>.

not to vote, even if they are eligible.¹⁵⁷ Exclusionary voter zoning is a more expansive term than de facto disenfranchisement. Through physical and administrative voter zoning, exclusionary voter zoning establishes a map of disenfranchisement and a cloud that hangs over people's heads, and a maze of different laws, policies, and behaviors that state and local actors and society use to regulate and ban the exercise of people's political power when they have criminal convictions.

A. Physical Exclusionary Voter Zoning

The laws on the books that determine people's location and movement demonstrate exclusionary voter zoning practices. Courts have confirmed that state constitutions and laws give them unfettered discretion to determine when, how, and if a person will ever get their voting rights restored.¹⁵⁸ States do not have to follow any criteria when implementing their voting bans, aside from U.S. constitutional protections,¹⁵⁹ and where a person resides dictates their possible path to the ballot box upon conviction.¹⁶⁰

Often confusing, these voter exclusion laws signal that states do not want people with criminal convictions in the ballot box, or, at the very least, states do not want to make it easy for them to vote.¹⁶¹ The most straightforward and repressive voter zoning regulation is the lifetime ban on voting for people with criminal convictions.¹⁶² Other conditions limit voting eligibility, including being incarcerated,¹⁶³ paying all legal financial obligations

¹⁵⁷ Neil Sobol explained the contours and impact of de facto disenfranchisement in his 2023 article, *Defeating De Facto Disenfranchisement of Criminal Defendants*. Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 292 (2023).

¹⁵⁸ See, e.g., *In re Phillips*, 574 S.E.2d 270, 273 (Va. 2003) (finding the power to remove political disabilities, such as a restriction from voting, rests solely with the Governor).

¹⁵⁹ The U.S. Supreme Court has found only one state policy unconstitutional thus far. In *Hunter v. Underwood*, the Court ruled that Alabama's ban on voting for people with misdemeanor convictions violated. *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

¹⁶⁰ The National Council of State Legislatures maintains a detailed website describing the diverse ways states ban people from voting. *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGIS., <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights>, (Aug. 19, 2025).

¹⁶¹ In critiquing voter access, Aleschia Hyde noted, "The degree of fragmentation exacerbates the disparities in political power between similar voting groups across different states." Aleschia Hyde, *Unequal Access: Federalism, Courts, and the Limits of Voting Rights*, 3 *THE CHICAGO BLACK POL'Y REV.* 24, 26 (2026).

¹⁶² For example, residents of Delaware convicted of the felony crimes of murder, bribery, or sexual offenses in Delaware or another U.S. jurisdiction will never regain their right to vote. DEL. CONST. art. 5, § 2(b) (allowing anyone who receives a pardon and those who has completed the terms of their sentence, including probation and parole, to vote, except if they were convicted of the enumerated felony offenses).

¹⁶³ NAT'L CONF. OF STATE LEGIS., *supra* note 160. As of August 2025, twenty-three

(LFOs),¹⁶⁴ and completing a waiting period.¹⁶⁵ Where a person's prior conviction occurred also matters; for example, a resident of Florida with an out-of-court felony conviction may be eligible to vote if that person obtained the felony in a state that would allow them to vote.¹⁶⁶

Another impediment to following these requirements is that the processes themselves may change frequently. If a person does not know or follow the procedures states implement properly, then that person cannot vote, even if they meet the eligibility criteria. While changing the laws to expand the vote to people is a positive move toward more access to the ballot box, the reforms cause confusion and uncertainty about what information people should trust.¹⁶⁷

states do not allow people to vote while they are incarcerated, but, upon release, they are eligible to vote automatically. *Id.* In several states, people must complete post-release surveillance requirements, including probation and parole, before they are eligible to register to vote. *Id.*

¹⁶⁴ One Wisconsinite advocate note that a 2025 state bill that would have imposed a requirement that people complete all court-ordered obligations, including LFOs and community service, “had as its goal to make it more difficult for long marginalized communities in Wisconsin who are disproportionately Black, Indigenous, and other people of color, as well as people living in poverty and those with disabilities, to be able to exercise their right to vote.” Frank Zufall, *Evers Vetoes Bill that Would Have Made Unpaid Court Fees a Barrier to Voting*, WISC. EXAMINER (Aug. 13, 2025, 5:02 PM), <https://wisconsinexaminer.com/briefs/evers-vetoes-bill-that-would-have-made-unpaid-court-fees-a-barrier-to-voting>. Though Wisconsin Governor Tony Evers vetoed the measure, other states, like Florida, continue to require the fulfillment of financial requirements prior to restoring people's voting rights. See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. Rev.* 2431, 2461 (2022).

¹⁶⁵ In Wyoming, a person convicted of a second or more nonviolent felony or an enumerated violent felony in a Wyoming or out-of-state criminal case must wait at least five years before they may apply to regain their right to vote. WY Stat. §§ 7-13-105, 6-10-106; *Restoration of Rights*, WYO. DEP'T. OF CORRS, <https://corrections.wyo.gov/about-us/restoration-of-rights> (May 30, 2025).

¹⁶⁶ *Felon Voting Rights*, FLA. DIV. OF ELECTIONS, <https://dos.fl.gov/elections/for-voters/voter-registration/felon-voting-rights> (July 10, 2024); Patrick Berry, *Can Trump Vote Now That He Has Felony Convictions?*, BRENNAN CTR. FOR JUST. (July 29, 2024), <https://www.brennancenter.org/our-work/research-reports/can-trump-vote-now-he-has-felony-convictions>.

A person incarcerated in a federal prison can vote only if, prior to their incarceration, they were a resident of a jurisdiction that retains voting rights for people who are incarcerated. See *Voting Rights for Incarcerated Individuals*, DEP'T. OF JUST. BUREAU OF PRISONS, 1 (2022) https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2022/03/23/bop_voting_handout.pdf.

¹⁶⁷ Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts> (quoting Brandon Rottinghaus as stating, “The more you move around how voting occurs, like the hours and the locations, the harder it is for voters to understand exactly what they’re

The ever-changing ban and restoration requirements in South Dakota, for example, demonstrate the disenfranchisement maze's challenges. Before 2012, people could not vote while incarcerated.¹⁶⁸ A person sentenced to probation, without a prison sentence, would still be able to vote, and a person serving time would have their rights restored once they were released or completed their parole.¹⁶⁹ In 2012, the South Dakota legislature changed voting eligibility so that everyone convicted of a felony would be banned from voting.¹⁷⁰ A person could seek to restore their voting rights upon release from prison or completion of probation and parole.¹⁷¹ This act reduced the number of eligible voters, but the pre-2012 rules still applied to anyone convicted of a felony before 2012.¹⁷² In 2018 and 2020, the Secretary of State imposed the requirements that people pay restitution imposed by their sentencing judge and pay the fines and fees associated with their conviction, respectively.¹⁷³ As such, even more people lost their right to vote who had previously been eligible since the 2012 legislative action.¹⁷⁴ The Secretary of State eliminated the delineation between pre-2012 and post-2012 convictions, meaning that anyone with a felony conviction had to abide by the state-imposed restrictions on their right to vote in 2021.¹⁷⁵ A year later, in December 2022, the Secretary of State withdrew the requirement that people had to pay their financial legal obligations prior to restoring their right to vote.¹⁷⁶ Over a ten-year period, the legislative and executive branches added and took away limitations on voter eligibility in South Dakota.

In New Mexico, the eligibility as well as the method of voter registration changed for people with criminal convictions.¹⁷⁷ A 2001 law allowed

supposed to do and when. . . . A confused voter is usually a nonvoter.”). For analysis of Florida governors’ history of changing the state’s disenfranchisement maze with each new administration, see Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2461 (2022), and for a description of Tennessee’s convoluted maze, see Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 229 (2025).

¹⁶⁸ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project’s 2025 Civic Power: Democracy Unchained! 6 (July 11, 2025) (on file with author).

¹⁶⁹ *Id.*

¹⁷⁰ *South Dakota Restoration of Rights & Record Relief*, RESTORATION OF RTS. PROJ. (June 24, 2026), <https://ccresourcecenter.org/state-restoration-profiles/south-dakota-restoration-of-rights-pardon-expungement-sealing>.

¹⁷¹ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project’s 2025 Civic Power: Democracy Unchained! 6 (July 11, 2025) (on file with author).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the

restoration after release from prison or the completion probation or parole.¹⁷⁸ A 2023 law expanded voter eligibility by authorizing automatic voter restoration after people had served their sentence.¹⁷⁹

Over a span of three years, North Carolina laws on voter disenfranchisement changed.¹⁸⁰ In 2022, a state trial court ruled that banning people on probation and parole from voting violated the state constitution's equal protection clause.¹⁸¹ This monumental decision "unlocked" the vote for 56,000 people who had been excluded from the ballot box.¹⁸² A year later, however, the Supreme Court of North Carolina reversed the trial court, holding that North Carolina's voting ban was not unconstitutional.¹⁸³ In the same period as this state lawsuit, North Carolina residents filed a federal lawsuit claiming that a North Carolina strict liability statute¹⁸⁴ that criminalized voting while ineligible because of a conviction was unconstitutional.¹⁸⁵ The appellate court affirmed the trial court's ruling, finding the strict liability statute violated the equal protection and due process clauses of the Fourteenth Amendment by discriminating against Black people.¹⁸⁶ Though the state and federal cases addressed different issues related to voter exclusion based on criminal convictions, the different decisions regarding whether a person may vote in North Carolina after a criminal conviction likely cause confusion, unintentionally.¹⁸⁷

If a person cannot afford to pay to obtain hard copies of required records or fees for accessing certain information for state agencies, then, again, that

Sentencing Project's 2025 Civic Power: Democracy Unchained! 11 (July 11, 2025) (on file with author).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Kelan Lyons, *In North Carolina, a Rush To "Restore Hope In The Vote" in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

¹⁸¹ Community Success Initiative v. Moore, No. 19 CVS 15941, 2022 WL 17415364, at *9 (*N.C. Super. Mar. 20, 2022*), *rev'd*, 384 N.C. 194, 886 S.E.2d 16 (*N.C. 2023*) (stating that the voting restriction "continues to carry over and reflect the same racist goals that drove the original 19th century enactment").

¹⁸² Kelan Lyons, *In North Carolina, a Rush To "Restore Hope In The Vote" in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

¹⁸³ Cmty. Success Initiative v. Moore, 384 N.C. 194, 199 (*N.C. 2023*).

¹⁸⁴ N.C. GEN. STAT. § 163-275(5) (2025).

¹⁸⁵ Blair Bowie, Director, Restore Your Vote, Campaign Legal Ctr., Address at the Sentencing Project's 2025 Civic Power: Democracy Unchained! 7 (July 11, 2025) (on file with author).

¹⁸⁶ *Id.*

¹⁸⁷ Anne Blythe, *A Knotty Felon Voting Rights Case Reaches the Court of Appeals*, THE ASSEMBLY (May 15, 2025), <https://www.theassemblync.com/news/politics/justice/felon-voting-rights-court-of-appeals>.

person who is eligible on paper cannot vote.¹⁸⁸ People with criminal records have a higher rate of unemployment and earn less income when employment than those without criminal records.¹⁸⁹ As such, the intersection of low financial access and the requirement to pay fees leads to disenfranchisement.¹⁹⁰

B. Administrative Exclusionary Voter Zoning

The criminal legal system and its actors impose numerous rules and requirements on people that result in the exclusion of eligible voters from exercising their political power. Some of these exclusions create access impediments for eligible voters, while others are targeted at chilling voters.

A person who is detained in jail pending trial is eligible to vote.¹⁹¹ The barriers to voting, including not being to access polling places and not having the resources to register from jail, however, influence the low voter turnout rate of people in jail.¹⁹²

Recently, the Sentencing Project released a report that investigated the barriers that people incarcerated in Maine and Vermont faced when attempting to access the vote.¹⁹³ Maine and Vermont, along with Washington, D.C., and Puerto Rico, never ban a person's right to vote because of a criminal conviction.¹⁹⁴ Still, the report identified mail and capacity as challenges to people's ability to exercise their right to vote while incarcerated.¹⁹⁵

Whether incarcerated or released, the criminal legal system restricts people's movement and voting access.¹⁹⁶ For people serving sentences, if the

¹⁸⁸ Nathan W. Link et al., *Monetary Sanctions, Legal and Collateral Consequences, and Probation & Parole: Where Do We Go From Here?*, 4 [UCLA CRIM. JUST. L. REV.](#) 199, 208 (2020).

¹⁸⁹ See Carla Laroche, *Black Women & Voter Suppression*, 102 [B.U. L. REV.](#) 2431, 2469 (2022).

¹⁹⁰ Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 319-22 (2023).

¹⁹¹ Matthew Peljovich, *Can People Vote in Jail? Yes, But It's Very Challenging*, CAMPAIGN L. CTR. (Aug. 1, 2022), <https://campaignlegal.org/update/can-people-vote-jail-yes-its-very-challenging>.

¹⁹² *Id.*; Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 [FLA. L. REV.](#) 287, 312-19, 322-25 (2023).

¹⁹³ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT'G PROJECT, 6 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

¹⁹⁴ Criminal Disenfranchisement Laws Across the United States, BRENNAN CTR. FOR JUST., 1 (2026), <https://www.brennancenter.org/media/15740/download/2026.06.05-bc-criminal-disenfranchisement-laws-map-1.pdf?inline=1>.

¹⁹⁵ *Id.*

¹⁹⁶ See, e.g., *Post-Conviction Supervision*, U.S. COURTS,

local elections office does not know the registered voters are incarcerated and sends their mail-in ballots to their pre-incarceration residences, the ballots will not get to their intended eligible voters. Jails and prisons have largely eliminated in-person visits, so someone else cannot bring the ballot into the facility for the voters to complete and sign.¹⁹⁷ Prisons are often far away from voters' residences.¹⁹⁸ People in jails and prisons do not receive hard copy mail in a growing number of states.¹⁹⁹ Instead, administrators contract with a third-party company to scan mail and send it to people electronically.²⁰⁰

A person on probation or parole must follow rules imposed on them about curfews, banned locations, and movement out of state.²⁰¹ A person with a sentence that restricts them from being a certain distance from a school may not be able to vote if a school is their polling place, for example.²⁰² This

<https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision> (last visited Mar. 3, 2026); see generally *Overview of Probation and Supervised Release Conditions*, ADMIN. OFF. U.S. COURTS (2024), https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf.

¹⁹⁷ Leah Wang, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families*, PRISON POL'Y. INITIATIVE (Dec. 21, 2021), https://www.prisonpolicy.org/blog/2021/12/21/family_contact; Shannon Sims, *The End of American Prison Visits: Jails End Face-to-Face Contact – And Families Suffer*, GUARDIAN (Dec. 9, 2017, 8:17 EST), <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits>.

¹⁹⁸ Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 *COLUM. J. RACE & L.* 517, 535 (2022) (describing the difficulties legal counsel and families have in visiting loved ones who are incarcerated because of the distance).

¹⁹⁹ Tamanika Ferguson, *New Prison Mail Policies Threaten Newsletters by and for Incarcerated People*, TRUTHOUT (Nov. 4, 2025), <https://truthout.org/articles/new-prison-mail-policies-threaten-newsletters-by-and-for-incarcerated-people>; Leah Wang, *Mail Scanning: A Harsh and Exploitative New Trend in Prisons*, PRISON POL'Y INITIATIVE (Nov. 17, 2022), <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning>.

²⁰⁰ Tamanika Ferguson, *New Prison Mail Policies Threaten Newsletters by and for Incarcerated People*, TRUTHOUT (Nov. 4, 2025), <https://truthout.org/articles/new-prison-mail-policies-threaten-newsletters-by-and-for-incarcerated-people>; Leah Wang, *Mail Scanning: A Harsh and Exploitative New Trend in Prisons*, PRISON POL'Y INITIATIVE (Nov. 17, 2022), <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning>.

²⁰¹ For a survey of state restrictions because of probation and parole, see *Post-Conviction Restrictions by Jurisdiction*, PROBATION INFO. NETWORK, <https://www.probationinfo.org/restrictions> (last visited Mar. 4, 2026); *Sex Offender Registry Requirements Across the United States*, PROBATION INFO. NETWORK, 1-2 (2025), <https://www.probationinfo.org/wp-content/uploads/2025/07/3-SOR-Residence-Distance-Restrictions-2025.pdf>.

²⁰² *Chapter 3: Place Restrictions (Probation and Supervised Release Conditions)*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision/overview-probation-and-supervised-release-conditions/chapter-3-place-restrictions-probation-and-supervised-release> (last visited Mar.

location likely adds more barriers to voting, even if a person is eligible to do so.²⁰³

Further, it may be hard to get to a polling place or access a mailbox to deliver their mail-in ballots. Recently, a large county in Texas, Tarrant County, voted to reduce the number of polling sites from 331 to 216.²⁰⁴ While these changes may seem to impact all voters equally,²⁰⁵ the consequence of this reduction would likely hit people with criminal convictions harder because of their inability to travel and to afford transportation to get to the polls that are farther away.²⁰⁶ With decisionmakers removing funding to help people get to the polls, they are making it harder for eligible voters with convictions to vote.²⁰⁷

For individuals released from incarceration, the requirements that eligible voters prove their address before they may vote represent another source of exclusion. Some states require that eligible voters submit hard copy or electronic documents that prove they are residents of the jurisdiction in which they seek to register to vote.²⁰⁸ Because people who have served prison sentences experience homelessness at a higher rate than the general public—seven times higher if they have been incarcerated once and thirteen times higher if they have been in prison more than once—²⁰⁹ they would likely have

3, 2026).

²⁰³ For discussions of additional barriers to accessing the ballot, see Robin Levinson-King, *US Election 2020: Why it Can be Hard to Vote in the US*, BBC NEWS (Oct. 20, 2020), <https://www.bbc.com/news/election-us-2020-54240651>; Brandon Tensley, *Why Voting Is Becoming Harder for Black Americans in Southern States*, CAP. B NEWS (Aug. 26, 2025), <https://capitalnews.org/black-voting-rights-threats-2025>.

²⁰⁴ Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts>.

²⁰⁵ *Id.* (stating that Tarrant County’s changes “discourage people from voting”).

²⁰⁶ Brianna Borrelli, Student Note, *The Interplay of Mass Incarceration and Poverty*, XXX GEORGETOWN J. POVERTY L. & POL’Y 287, 296-97 (2023); Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CTR. FOR JUST. (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>; Drew Shaw, *A Texas County Cuts Over 100 Polling Sites as Trump Attacks Mail-In Voting Nationally*, PROPUBLICA (Aug. 20, 2025, 6:35 PM), <https://www.propublica.org/article/tarrant-county-texas-polling-sites-early-voting-cuts> (discussing the increase cost of voting, in money and time).

²⁰⁷ *Id.* In Tarrant County, Texas, the head of the commission responsible for election policies stated, “I don’t believe it’s the county government’s responsibility to try to get more people out to the polls.”

²⁰⁸ *Voter Registration and Proof of Residence*, WIS. ELECTIONS COMM’N, <https://elections.wi.gov/Register#230548828-870893236> (last accessed Sept. 24, 2025) (listing the types of documents a person in Wisconsin must submit before they are able to vote).

²⁰⁹ Selena Muñoz-Jones & Emily Widra, *How Your Local Public Housing Authority Can*

difficulty meeting this residency requirement.

In addition, state actors' acts and omissions work to stop people with convictions from voting. For example, elections officials may limit²¹⁰ and/or hide access to information and resources that would allow people with criminal convictions to register and vote.²¹¹

Laws and policies exist that ban or deter allowing prisons and jails to serve as official polling places.²¹² People in opposition to jail- and prison-based polling places may argue that people cannot be trusted or depended on to tabulate jail or prison votes in the correct voting district, for example.²¹³ People with convictions may have a harder time obtaining state identification²¹⁴ and their access may depend on finding a notary for absentee ballots as well.²¹⁵

While the complicated disenfranchisement maze has previously been

Reduce Barriers for People with Criminal Records, PRISON POL'Y INITIATIVE (Feb. 15, 2023), <https://www.prisonpolicy.org/blog/2023/02/15/publichousing>; Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL'Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

²¹⁰ David Wildstein, *Several Thousand N.J. Voters Received Letters Saying They Can't Vote in Primary*, N.J. GLOBE (June 8, 2025, 7:43 P.M.), <https://newjerseyglobe.com/campaigns/several-thousand-n-j-voters-received-letters-saying-they-cant-vote-in-primary> (noting that an elections official in New Jersey refused to include information on voters' right to appeal their removal from the voter rolls).

²¹¹ Alex Burness, *The Michigan Jail that Candidates Keep Visiting*, BOLTS (Nov. 26, 2024), <https://boltsmag.org/flint-michigan-jail-candidate-forums> ("People in jails are largely cut off from voter information. They seldom exercise the right to vote because actually casting a ballot from any of the roughly 3,000 jails across the country is usually an enormous struggle, if not practically impossible. This is due in major part to general indifference, and sometimes even [outright resistance](#), from local officials and sheriffs who oversee county jails and control ballot access for people in custody.").

²¹² Louisiana prohibits setting jail and prisons as polling places. *See* LA. STAT. § 18:533(C)(2) (2025); *Louisiana Jail Voting Restrictions Challenge*, DEMOCRACY DOCKET, <https://www.democracymagazine.com/cases/louisiana-jail-voting-restrictions-challenge> (last visited Mar. 4, 2026).

²¹³ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT'G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction> (discussing voting in prison difficulties).

²¹⁴ Naila Awan, *Jail-Based Polling Locations: A Way to Fight Voter Disenfranchisement*, PRISON POL'Y INITIATIVE n.1 (Oct. 25, 2022), https://www.prisonpolicy.org/blog/2022/10/25/jail_voting/#lf-fnref:1.

²¹⁵ *What You Need to Know About Absentee Ballot Notary and Witness Signature Requirements*, U.S. VOTE FOUND., <https://www.usvotefoundation.org/absentee-ballot-notary-witness-requirements> (last visited Mar. 3, 2026); David Thun, *A Guide to State Vote-By-Mail Ballot Notarization Requirements*, NAT'L NOTARY ASSOC'N, <https://www.nationalnotary.org/notary-bulletin/blog/2020/09/guide-state-vote-by-mail-notarization?srsltid=AfmBOopLO9cZQ7gwpTMYhoRi5hyFIFEYUF-bMFNsZRTxVRVGGRT8O9SH> (Nov. 10, 2022).

addressed,²¹⁶ state officials also may use a variety of unwritten tactics to delay or deny eligible people's voting rights and reinforce the maze.²¹⁷ For example, when people have met the criteria that a jurisdiction has implemented and apply to have their voting rights restored, state actors prolong the time it takes to review and make decisions on those applications.²¹⁸ Virginia's law and policy excluded all people with felony convictions from the ballot box and only restored people's voting rights on a "case-by-case" basis.²¹⁹ This restriction meant that over 264,000 Virginians could not vote, with 46% of disenfranchised people being Black and "nearly 10% of voting-aged Black Virginians" unable to vote.²²⁰

In 2024, Virginia passed a law allowing people held in jail prior to a trial to vote by absentee ballot.²²¹ That push to grant otherwise eligible people to vote does not lead to automatic access to the absentee ballots. A Sentencing

²¹⁶ See *supra* Subpart IIA. for a discussion of the laws and policies states enact that makes determining one's eligibility to vote difficult.

²¹⁷ Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2451 (2022).

²¹⁸ Mallory Noe-Payne, *Branded: The Fight to Restore Voting Rights*, RADIO IQ (Oct. 25, 2023), <https://www.wvtf.org/branded-the-fight-to-restore-voting-rights> (analyzing voter exclusion through criminal convictions in Virginia and noting that the state administration made no indication of when it would decide whether it would restore applicants' votes); Mallory Noe-Payne, *Virginia NAACP Pushes for Clear Guidelines on Rights Restoration from Youngkin Administration*, RADIO IQ (July 18, 2023, 2:31 PM), <https://www.wvtf.org/news/2023-07-18/virginia-naacp-pushes-for-clear-guidelines-on-rights-restoration-from-youngkin-administration> (reporting that the then-governor's administration had slowed down the restoration process).

²¹⁹ Steve Thompson, *Federal Judge Bars Virginia From Keeping Thousands of Felons From Voting*, WASH. POST (Jan. 24, 2026, 5:00 AM), <https://www.washingtonpost.com/politics/2026/01/24/felon-voting-rights-youngkin-virginia/>; King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 6 (*E.D. Va.* Jan. 22, 2026).

²²⁰ King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 7 (*E.D. Va.* Jan. 22, 2026). Recently, a federal trial court found that Virginia's voter exclusion law violated a federal law passed to grant Virginia readmission to the United States after the U.S. Civil War banned the state from restricting the vote of people convicted of a crime outside of twelve felonies. King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 1-2, 32 (*E.D. Va.* Jan. 22, 2026). The Virginia Readmission Act demanded that Virginia never change its constitution to exclude a person with a conviction from voting "except as a punishment for such crimes as are now felonies at common law." Va. Readmission Act § 10, 16 Stat. 62, 63 (1870). The twelve felonies that existed at that time were "(1) arson; (2) burglary; (3) escape and rescue from a prison or jail; (4) larceny; (5) manslaughter; (6) mayhem; (7) murder; (8) rape; (9) robbery; (10) sodomy; and (11) suicide." King v. Youngkin, 3:23-cv-00408-JAG, DE 222, at 3, 26 (*E.D. Va.* Jan. 22, 2026). For further discussion about the enforceability of the Acts, see Franita Tolson, *'In Whom is the Right of Suffrage?': The Reconstruction Acts as Sources of Constitutional Meaning*, 169 *UNI. PENN. L. REV.* 212, 221-22 (2021).

²²¹ Amanda Hernández, *New Laws Restore Voting Rights to Residents With Felony Convictions*, SOURCE NM (Oct. 24, 2024, 4:30 AM), <https://sourcenm.com/2024/10/24/new-laws-restore-voting-rights-to-residents-with-felony-convictions>.

Project report on voting in Maine and Vermont prisons explains some of the reasons for that. The report emphasized the lack of staff training on voting deters people's ability to vote.²²² Staff were not aware of the two-step process people who are incarcerated must fulfill to obtain a ballot.²²³ First, potential voters must register to vote and then they have to request an absentee ballot.²²⁴ If a person thinks they will receive a ballot automatically after registering, they will not complete the second requirement, and, therefore, not be able to vote. This two-step process is especially important because of the delays and mandatory procedures associated with the mail system in prisons.²²⁵ Further, states transfer people to different facilities, and people must request a new ballot at a new prison or else they have no chance of receiving their ballot.²²⁶

Not only do individuals find it hard to access information pertinent to their local ballots and to acquire material on local issues while in prison,²²⁷ but, on a more basic level, they do not even learn that they are eligible to vote at all.²²⁸ Not knowing they can vote signals to people with convictions and who are incarcerated that their vote does not matter or even exist. Further, elections officials, including in Tennessee and Oklahoma, expressing their active disinterest and discriminatory feelings towards people with convictions being able to vote indicate hostility to their political rights.²²⁹ The process to restore one's vote is so complicated that it becomes a disenfranchisement maze.²³⁰

Instilling fear of prosecution and incarceration for voting serves as another exclusionary voter zoning tactic. Even if the laws do not change every four years, people interested in registering to vote may not be certain of

²²² Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT'G PROJECT, 11 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²²³ *Id.* at 14, 17.

²²⁴ *Id.*

²²⁵ *Id.* at 17-18.

²²⁶ *Id.* at 18.

²²⁷ *Id.* at 12-13.

²²⁸ Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, THE SENT'G PROJECT, 4 (2023), <https://www.sentencingproject.org/app/uploads/2024/03/Expand-the-Vote-State-Felony-Disenfranchisement-Reform-1997-2023.pdf>.

²²⁹ Erika Wood & Rachel Bloom, ACLU & BRENNAN CTR. FOR JUST., *DE FACTO DISENFRANCHISEMENT*, 7-8 (2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf>.

²³⁰ For discussion of the disenfranchisement maze and its barriers to restoring a person's right to vote, see *supra* Subpart IIA.

whether they have followed the proper procedures once they receive a voter registration card.²³¹ Because of this disenfranchisement maze, states have targeted individuals with criminal prosecutions when those individuals thought they were eligible to vote then registered and casted their ballot, not realizing their ineligibility.²³² States have also created governmental agencies under the auspice of stopping voter fraud that have cast doubt on people's eligibility to vote. These agencies have gone after people in Florida who received a voter registration card from state officials and then voted only to learn that they were ineligible.²³³

This maze causes confusion regarding who and where to go to get their rights restored properly.²³⁴ In *Voter Emancipation in Slavery's Afterlife*, I detailed how Pamela Moses's efforts to certify her eligibility to have her rights restored led her to go to different government entities to obtain documents and certify her voting eligibility.²³⁵ Ms. Moses sought to run for mayor of Memphis, Tennessee, but elections officials indicated she was ineligible to do so because she was still on probation.²³⁶ Ms. Moses believed the government's records were incorrect and went to criminal court, the probation office, and back to the elections office to confirm her eligibility.²³⁷ Even with signed verification from the probations office, Ms. Moses was tried and convicted of voting while ineligible because the probation officer who reviewed her records did not search all databases that would have showed Ms. Moses was still on probation.²³⁸ Ms. Moses was sentenced to six years in prison, but the court granted her a new trial after evidence came to light that the probation officer was responsible for Ms. Moses's submission of her eligibility paperwork.²³⁹ Going to court and local government offices to confirm her eligibility took time and diligent effort. And even though Ms.

²³¹ For instance, see Steve Contorno & Geneva Sands, *Florida Police Cameras Show August Arrests for Alleged Voter Fraud*, CNN (Oct. 19, 2022, 6:40 AM), <https://www.cnn.com/2022/10/19/politics/tampa-police-body-cam-video-voter-fraud-arrest-florida-desantis>; Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 230 (2025).

²³² Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 230-31 (2025).

²³³ Steve Contorno & Geneva Sands, *Florida Police Cameras Show August Arrests for Alleged Voter Fraud*, CNN (Oct. 19, 2022, 6:40 AM), <https://www.cnn.com/2022/10/19/politics/tampa-police-body-cam-video-voter-fraud-arrest-florida-desantis>.

²³⁴ Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 [SETON HALL L. REV.](#) 201, 209 (2025).

²³⁵ *Id.* at 238-42.

²³⁶ *Id.* at 239.

²³⁷ *Id.* at 239-40.

²³⁸ *Id.* at 241.

²³⁹ *Id.*

Moses followed the process, she faced incarceration.²⁴⁰

Ms. Moses's experience demonstrates what the disenfranchisement maze does systematically, that is, it constructs the act of voting by a person with a conviction as illegitimate, places the burden of proving eligibility on the voter rather than the state, withholds the information necessary to meet that burden, and then treats the resulting errors as crimes. The state protects the ballot box protected space by formal legal prohibition and by the threat of prosecution for those who attempt to enter it without navigating the maze correctly.

People notice whom the state prosecutes and who gets harsher punishments after a conviction. The records reflect that people of color with convictions who register to vote and who vote without the intent to break the law get villainized for their acts and receive prison sentences while others who vote twice and who try to vote on behalf of dead relatives receive little, if any, punishment.²⁴¹ These selective prosecutions have had an impactful chilling effect on potential voters.²⁴²

On a level more directed the risk of physical harm, the influx of armed election watchers who claim to be protecting poll sites from fraud serve as another deterrent.²⁴³ These groups represent physical barriers to the ballot box. The fear of violence and vigilantes surveilling them at the election sites may cause people with criminal convictions to avoid voting altogether.²⁴⁴

²⁴⁰ *Id.* at 241-42.

²⁴¹ See *id.* at 229-30 (offering comparisons of Black women who were sentenced to yearslong sentences for voting while ineligible because of criminal convictions while white people who submitted ballots on behalf of relatives and who voted in two different jurisdictions received probation or other alternative to incarceration options).

²⁴² Faheem Mohammed, *Voting Rights Project: Florida Final Report*, WATSON INSTITUTE FOR INT'L AND PUB. AFFS. 7 (2024), <https://watson.brown.edu/taubman/files/taubman/imce/research/voting-rights-project/Florida%20Final%20Report.pdf> (on file with the author); Cecile Scoon & Debbie Chandler, *Florida's Voter Intimidation Crisis*, LEAGUE OF WOMEN VOTERS (Dec. 18, 2024), <https://www.lwv.org/blog/floridas-voter-intimidation-crisis> ("The arrests, conducted publicly just before an election, have sown mass confusion and fear, especially in Black and brown communities. The chilling effect has been profound, as vulnerable populations now hesitate to exercise their right to vote, fearing that doing so could lead to criminal charges."); Ashley Lopez, *Advocates in Florida Clamor for a Fix for the Formerly Incarcerated Who Want to Vote*, NPR (May 4, 2023, 5:01 AM), <https://www.npr.org/2023/05/04/1173786694/felon-voting-database-florida-registration-card-disclaimer>.

²⁴³ Allison Anderman, *Protecting Voters and Election Workers from Armed Intimidation*, BRENNAN CTR. FOR JUST. (Aug. 26, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/protecting-voters-and-election-workers-armed-intimidation>; Abby Vesoulis, *Vigilantes Are Intimidating Voters and Election Workers. That's Nothing New in America.*, MOTHER JONES (Nov. 8, 2022), <https://www.motherjones.com/politics/2022/11/poll-watchers-election-armed-vigilantes>.

²⁴⁴ Recent discussions of the Trump Administration deploying U.S. Immigration and Customs Enforcement agents to polling places elevates that concern even further. Sean

At the community level, silence about banning people with criminal convictions from voting normalizes the exclusion. Even if people do not express support for state actors' rhetoric against people with convictions voting explicitly, the public remains quiet about these attacks on the franchise. In doing so, their silence may serve as implicit approval of zoning individuals out of the ballot box.

III. INCLUSIONARY VOTER ZONING

Many citizens, especially Black people, in this country are not allowed to vote based on criminal history, and that is wrong. Many people have the right to vote even though they commit crimes; they are able to do so, however, because they were never prosecuted for said crimes.²⁴⁵ Like exclusionary zoning, exclusionary voter zoning affects Black communities disproportionately in this context because the criminal legal system targets Black people and because of the deep-rooted desire to prevent systemically excluded communities from exercising their right to vote. Exclusionary voter zoning has a noxious effect on Black communities, to the benefit of white communities and spaces. The protected space is the electorate. The threat is the person with a criminal conviction, constructed through law, policy, and prosecution as a public nuisance whose presence in the electoral space disrupts the community's racial order. Spatial enforcement in the disenfranchisement maze removes people with convictions from the protected space and maintains that removal across time, jurisdiction, and changing laws and administrations. This exclusion is not a set of policy failures; it is a system meant to produce and maintain an electoral space that excludes a racially defined population.

Morales-Doyle, *Federal and State Election Laws Ban Federal Forces from Polling Places*, BRENNAN CTR. FOR JUST. (Feb. 10, 2026), <https://www.brennancenter.org/our-work/research-reports/federal-and-state-election-laws-ban-federal-forces-polling-places>; Paul Blumenthal, *ICE Is Already Impacting Elections — Even If They Don't Show Up At The Polls*, HUFFPOST (Feb. 15, 2026, 8:00 AM), https://www.huffpost.com/entry/ice-polls-election-2026_n_6990ccdee4b0d24cb0c4ba61; Alexandra Berzon & Nick Corasaniti, *Initial Review Finds No Widespread Illegal Voting by Migrants, Puncturing a Trump Claim*, N.Y. TIMES (Jan. 14, 2026), <https://www.nytimes.com/2026/01/14/us/politics/noncitizen-voters-save-tool.html>.

²⁴⁵ There is a myth about the high prevalence of voter fraud when, in reality, it is very minimal. Matt Barreto et al., *Debunking the Myth of Voter Fraud in Mail Ballots*, UCLA VOTING RTS. PROJECT, 6 (2020), <https://latino.ucla.edu/wp-content/uploads/2021/08/LPPI-VRP-Voter-Fraud-res.pdf>; *The Myth of Voter Fraud*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/topics/voting-elections/vote-suppression/myth-voter-fraud> (last visited Mar. 4, 2026); Mitchell A. Sobieski, *Why Republicans Invented the Myth of Voter Fraud to Justify Laws That Keep American Citizens From Voting*, MILWAUKEE INDEP. (Jan. 26, 2026), <https://www.milwaukeeindependent.com/featured/republicans-invented-myth-voter-fraud-justify-laws-keep-american-citizens-voting>.

Yet some U.S. states and jurisdictions have attempted to increase ballot access, which I build on to develop the inclusionary voter zoning concept. The concept borrows the affirmative mandate structure from housing law: rather than simply asking whether exclusion is discriminatory, it asks what affirmative obligation the state has to provide access.²⁴⁶ In the same vein that zoning law has its own reform tradition that mandates inclusionary zoning that offers a vocabulary of remedy that voting rights law currently lacks and that federal courts have now made even less available.

A. Voter Zoning Harms & Benefits

Thus far, this Article has discussed state police power and zoning authority separately from the exclusion of people from the ballot box. Here, it will demonstrate how the use of the former tools works to enforce the latter. The actions of the state regarding exclusionary voter zoning indicate that the state seeks to remove people with convictions from the ballot box as though exercising their political will represent a blight to the public welfare. How states use exclusionary voter zoning to regulate voter exclusion based on criminal convictions demonstrates that states likely perceive access to the vote for people with criminal convictions as analogous to an eyesore. In one case, the U.S. Supreme Court reasoned that states may use their police power to address awful housing conditions that “may. . . be an ugly sore [and] a blight on the community which robs it of charm.”²⁴⁷ The goal of the police power and zoning regulation is to protect the public welfare, including removing blight. The state does not argue, in most cases, that people with convictions are incapable of voting categorically. It acts as if people with convictions do not belong in this voting space, that the ballot box is a protected space, and their presence in it constitutes a kind of nuisance.

To be clear, this Article does not contend that the public nuisance doctrine, as constituted, provides a direct cause of action against voter exclusion schemes. Individuals have contested the doctrine’s expansion into non-traditional contexts; as Leslie Kendrick’s recent analysis demonstrates, historically, public nuisance has applied to interferences with physical space and has been subject to substantial criticism when extended beyond that domain.²⁴⁸ Rather, the zoning and public nuisance framing function here as

²⁴⁶ See *S. Burlington Cnty. N.A.A.C.P. v. Twp. of Mount Laurel*, 67 N.J. 151, 191 (1975).

²⁴⁷ *Berman v. Parker*, 348 U.S. 26, 32 (1954).

²⁴⁸ Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 *YALE L.J.* 702, 702–05 (2023); see also, Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 *WASHBURN L. J.* 541, 545–48 (2006) [(explaining the progress of public nuisance law in the United States); Richard O. Faulk & John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 *MICH. ST. L. REV.* 941, 944–47 (2007) (describing of plaintiffs seeking to

diagnostic tools; they reveal the implicit logic that underlies states' use of police power to exclude people with criminal convictions from the electorate.²⁴⁹ Naming that logic makes it available for critique and redress.

Like the fears and realities associated with regulation of property,²⁵⁰ the government uses exclusionary voter zoning to move eligible votes away from exercising their potential political power.²⁵¹ The unpredictability, confusion, and degradation of the disenfranchisement maze and exclusionary voter zoning, more generally, show just how irrational, arbitrary, and unrelated they are to the public safety and welfare.²⁵² In the short film, *Until We All Count*, Kareemah Hanifa, a Georgian voting rights advocate and a person on parole, noted that the state has met her attempts to have her voting rights restored with "opposition."²⁵³ Yet, film director and advocate Page Dukes explained that Georgia restored her voting rights after she requested the early termination of her probation. Hanifa is Black and Dukes is white. Dukes highlighted that the restoration of her voting rights represents a "success story" and, at the same time, "shows how arbitrary rights restoration can be."²⁵⁴

In zoning eligible voters out of political participation, they are zoning them into isolation and criminalization. Tiffany Shaw stated, "I had recognized my mistake and served my time. However, dread, low self-esteem

apply public nuisance liability to nontraditional issues).

²⁴⁹ See Cheryl I. Harris, *Whiteness as Property*, 106 [HARV. L. REV.](#) 1707, 1714–16 (1993); Reva B. Siegel, *Discrimination in the Eyes of the Law*, 88 [CAL. L. REV.](#) 77, 80–82 (2000); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 [STAN. L. REV.](#) 581, 615–17 (1990).

²⁵⁰ See PROPERTY AS A SOCIAL INSTITUTION: CASES, MATERIALS, AND PROBLEMS 301–02 (Sally B. Richardson, Peter M. Gerhart, & Michael Pappas eds., 2025) (describing the "strengths and weaknesses" of government regulation of property).

²⁵¹ Compare Boyoung Kang, *Felon Disenfranchisement as a Legitimate State Regulation*, 4 [J. RACE, GENDER, & ETHNICITY](#) 77, 78–79 (2009) (discussing the arguments of people who support the use of voter exclusion based on criminal convictions) with Alec C. Ewald, *Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 [WIS. L. REV.](#) 1045, 1049 (2002) (explaining why voter exclusion based on criminal convictions is not in the best interests of individuals and society); Nora Demleitner, *Felon Disenfranchisement*, 49 [U. MEM. L. REV.](#) 1275, 1276, 1290 (2019) (same). Recognizing the reasons people favor voter exclusion is not an attempt to promote or validate them. I provide the information to highlight that supporters of the exclusion exist, and, like zoning laws, states have the authority to implement voter exclusion.

²⁵² *Nectow v. City of Cambridge*, 277 U.S. 183, 187–88 (1928) (internal quotation omitted) (noting the standard to determine whether a government regulation should continue it "is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare").

²⁵³ REPRESENT JUSTICE, *Until We All Count*, at 8:10–8:20 (YouTube, Mar. 9, 2023), https://www.youtube.com/watch?v=_WZRAlwW3Co.

²⁵⁴ *Id.* at [7:41–8:09](#).

and a sense of exclusion communicated a repetitive, singular message: ‘your voice, your beliefs, your opinions don’t matter.’”²⁵⁵ This exclusionary voter zoning normalized regarding people with criminal records as not part of electorate and society, more generally.²⁵⁶ As Benjamin Plener Cover notes, voter exclusion “threatens overdeterrence, chilling democratic participation by eligible voters. Democracy cannot thrive when eligible voters are scared to vote.”²⁵⁷

State actions and policies through voter exclusion by geography create unjustified burdens and stigmatize individuals with criminal convictions. Diana Powell, executive director of Justice Served NC, Inc., asks people who are eligible but unwilling to register to vote, “If our vote wasn’t so important, . . . why would they fight us so hard to silence our voice and take that right away?”²⁵⁸ Exclusionary voter zoning offers a cyclic and reconfirming paradox: when the state zones eligible voters with criminal records out of the voting citizenry, then candidates and campaigns are disincentivized to assess their interests and earn their vote.²⁵⁹ Those within the political power structure may point to the low voter turnout as evidence that people held in prisons and jails do not want to vote and should be excluded from consideration.²⁶⁰

²⁵⁵ Tiffani Shaw, *Opinion: Would Voting Send Me Back to Prison? No One in Local Government Can Answer*, THE OKLAHOMAN (Oct. 20, 2024, 8:01 AM), <https://www.oklahoman.com/story/opinion/columns/2024/10/20/oklahoma-former-prisoner-incarcerated-vote/75717897007>.

²⁵⁶ Benjamin Plener Cover, *Voter Fraud Mistake*, 33 WM. & MARY BILL OF RTS. J. 1, 70 (2025) (emphasizing the “chilling effect” on voter turnout for people with convictions because of the arrests of people with convictions who voted or registered to vote while ineligible and without the intent to break the law).

²⁵⁷ *Id.* (promoting methods “[t]o protect democracy” by addressing laws that keep eligible voters from casting ballots).

²⁵⁸ Kelan Lyons, *In North Carolina, a Rush To “Restore Hope In The Vote” in People with Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

²⁵⁹ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 12 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf> (quoting people who are incarcerated who noted that candidates did not campaign within their facilities and that candidates did not “care about winning [their] vote”).

²⁶⁰ A North Carolina state court decision on voter exclusion based on criminal convictions explained the lower voter turnout in this way, “People who served probation sentences for misdemeanors are 15% less likely to vote following their sentence, whereas people who served probation sentences for felony convictions (and thus were denied the franchise) are 40% less likely to vote following their sentence. This 25% differential in turnout rates can be attributed to the experience of felony disenfranchisement.” *Cnty. Success Initiative v. Moore*, No. 19 CVS 15941, 2022 WL 17415364, at *19 (N.C. Super. Mar. 20, 2022), *rev’d*, 384 N.C. 194, 199, 886 S.E.2d 16, 24 (N.C. 2023).

Ultimately, exclusionary voter zoning works to nullify and frustrate the exercise of political power for individuals with criminal records. It also harms republican ideals. Exclusionary voter zoning increases citizen distrust of the criminal legal system and the political process.²⁶¹ In an accusatory system, people with convictions have an uphill battle reentering society; they may believe that the “cards” are stacked against them already, and risking their freedom so they may vote is not worth it.²⁶² As such, eligible voters do not participate in the political process.²⁶³ And while we know that four million people cannot vote because of voter exclusion based on criminal convictions, it is impossible to assess the extent exclusionary voter zoning has excluded voters each election cycle; removing eligible voters from the electorate, by law or by practice, goes beyond those four million people.²⁶⁴

All in the citizenry may not vote²⁶⁵ and must depend on other individuals to express their interests. This exclusion signals to all that only certain people have access to political power. Like exclusionary zoning, white people benefit from exclusionary voter zoning. In *Black Women & Voter Suppression*, I analyzed how racism functioned as a key driver of voter exclusion based on criminal convictions.²⁶⁶ Researchers and advocates have demonstrated that one “advantage” to the barriers to voting is that the higher voter turnout for “white Americans, and particularly affluent white

²⁶¹ See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 [YALE L.J.](#) 2054, 2085-86 (2017); Monica C. Bell, *Legal Estrangement: A Concept for These Times*, FOOTNOTES, July-Aug. 2020, at 7, 8, <https://www.asanet.org/news-events/footnotes/jul-aug-2020/features/legal-estrangement-concept-these-times> (explaining the concept of “legal estrangement” as “a process by which the law and its enforcers signal to marginalized groups that they are not fully part of American society”).

²⁶² In 2016, Texan Crystal Mason voted while still on federal supervision, which made her ineligible to vote in the state. Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 [SETON HALL L. REV.](#) 201, 207 (2025). After she was charged with voter fraud, Ms. Mason admitted that she never would have tried to vote had she known doing so would risk incarceration and, thereby, the state taking her away for her children again. *Id.*

²⁶³ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 11 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²⁶⁴ Christopher Uggen et al., *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction*, THE SENT’G PROJECT (Oct. 10, 2024), <https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction>; Neil Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 FLA. L. REV. 287, 292 (2023).

²⁶⁵ Some countries, including Australia and France, have mandatory voting, and impose financial and other sanctions for not voting. See *Compulsory Voting*, INT’L IDEA, <https://www.idea.int/data-tools/data/voter-turnout-database/compulsory-voting> (last assessed Mar. 20, 2026).

²⁶⁶ Carla Laroche, *Black Women & Voter Suppression*, 102

Americans.”²⁶⁷

As Georgian voting rights advocate Kareemah Hanifa expressed, exclusionary voter zoning “conditions people to believe that there is no hope.”²⁶⁸ Exclusionary voter zoning burdens people without true justification.²⁶⁹ Each of the government’s actions and inactions described in Part II illustrates the arbitrary nature of these laws and their disproportionate impact on people, especially the Black community.²⁷⁰ Analyzing the state’s zoning out of people with criminal convictions from the polity calls for a remedy.

B. Voter Zoning for Inclusion

The state’s exclusionary voting zoning is impactful to those who experience it. Corey Purdie admitted that he did not vote for years after getting his voting rights back in North Carolina, but he did vote for the first time in 2008.²⁷¹ Purdie described the experience as “traumatizing and liberating at the same time,” and he explained, “When I walked out, I said, ‘Man, I did it. I got a piece of myself back.’”²⁷² People with convictions should be part of the polity and should not have to navigate the disenfranchisement maze to prove their worth.²⁷³

Supporters of voter exclusion based on criminal conviction claim it is a legitimate exercise of the police power to protect public safety, but the empirical record refutes that argument. People with convictions who vote are less likely to recidivate than those who do not.²⁷⁴ As such, rather than viewing

²⁶⁷ Sean McElwee, *Why Voting Matters: Large Disparities in Turnout Benefit the Donor Class*, DEMOS (Sept. 16, 2015), <https://www.demos.org/research/why-voting-matters-large-disparities-turnout-benefit-donor-class>; Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2484-86 (2022).

²⁶⁸ REPRESENT JUSTICE, *Until We All Count*, at 11:42-11:46 (YouTube, Mar. 9, 2023), https://www.youtube.com/watch?v=_WZRAIwW3Co.

²⁶⁹ See Carla Laroche, *Black Women & Voter Suppression*, 102 *B.U. L. REV.* 2431, 2493-95 (2022) (critiquing the alleged reasons that people use to support voter exclusion based on criminal convictions).

²⁷⁰ See *supra* Sect. II.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Carla Laroche, *Voter Emancipation in Slavery’s Afterlife*, 56 *SETON HALL L. REV.* 201, 226 (2025) (describing how people with criminal convictions must prove their worth before the state restores their vote).

²⁷⁴ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 4 n.15 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf> (citing Kristen M. Budd & Niki Monazzam, *Increasing Public Safety by Restoring Voting Rights*, THE SENT’G PROJECT, 3 (2023), <https://www.sentencingproject.org/app/uploads/2023/07/Increasing-Public-Safety-by-Restoring-Voting-Rights.pdf>); Tova Wang, *Jail-Based Voting in Denver: A Case Study*, ASH

people with criminal records voting as a public nuisance, states should affirm their right to vote. Voting is a public safety intervention. If the police power authorizes states to act in ways that promote public health, safety, and welfare, and if the evidence shows that voting participation reduces recidivism, then the police power supports inclusionary voter zoning. The state that genuinely exercises its police power in good faith to protect the public welfare should expand ballot access for people with convictions, not contract it. Exclusionary voter zoning fails the arbitrariness test it claims to satisfy.²⁷⁵

Inclusionary voter zoning would address the discriminatory and exclusionary issues that exist in voting. In considering the real property context, scholars have indicated that inclusionary zoning “requires extensive revisions in zoning and land use programs.”²⁷⁶ State and local governments have removed barriers to certain types of land uses.²⁷⁷ For example, Minneapolis passed legislation in 2019 that banned single-family zoning, which is the type of zoning that supported wealthy families to the detrimental of multi-family homes.²⁷⁸ Other jurisdictions implement “affirmative inclusionary zoning” tactics, like requiring that new developments include affordable housing units.²⁷⁹ Addressing “overly restrictive exclusionary laws and regulations can make an enormous difference in the lives of even the most vulnerable Americans”; these efforts are significant and effective to achieving just property use and access.²⁸⁰

To create inclusionary voter zoning requires zoning, in physical and administrative form, all voters into the electorate, to encourage people to vote and to enhance voting accessibility and convenience. Inclusionary voter zoning ensures the health and welfare of democratic accountability. For a person with a criminal conviction, inclusionary voter zoning includes them as part of the electorate, with no mazes to navigate, no doors to unlock, and no cloud of exclusion hanging over their heads.²⁸¹ Voting should be a place

CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION: HARV. KENNEDY SCH., 3 (2024), <https://ash.harvard.edu/wp-content/uploads/2024/08/240573-Hvd-Ash-Jail-Voting-Denver-Final-8-4-24.pdf>; Tova Wang, *Jail-Based Voting in the District of Columbia: A Case Study*, ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION: HARV. KENNEDY SCH., 2 (2024), <https://ash.harvard.edu/wp-content/uploads/2024/02/jail-based-voting-in-the-district-of-columbia-case-study-2.6.24-1.pdf>).

²⁷⁵ See *Nectow v. City of Cambridge*, 277 U.S. 183, 187–88 (1928).

²⁷⁶ DANIEL R. MANDELKER, *LAND USE LAW* 7-23 (5th ed. 2023).

²⁷⁷ *THE RIGHT TO FAIR HOUSING: CASES, STATUTES, AND CONTEXT* 351 (Florence Wagman Roisman, Stacy E. Seicshnaydre, & Rigel C. Oliveri eds., 2025).

²⁷⁸ *Id.*

²⁷⁹ RICHARD D. KAHLENBERG, *EXCLUDED: HOW SNOB ZONING, NIMBYISM, AND CLASS BIAS BUILD THE WALLS WE DON’T SEE* 144-45 (2023).

²⁸⁰ *Id.* at 143.

²⁸¹ Kelan Lyons, *In North Carolina, a Rush to “Restore Hope in the Vote” in People*

and source of power rather than fear.

People who are incarcerated and who have criminal convictions have used “rival geographies” to contradict exclusionary voter zoning. Coined by Edward Said, Stephanie M. H. Camp has applied the term to explained how enslaved people used space and place to create their own form of movement in the face of the legal and cultural restrictions on their movement.²⁸² As Camp explained, “The rival geography . . . provide[d] space for private and public creative expression, rest and recreation, alternative communication, and importantly, resistance to planters’ domination of slaves’ every move.”²⁸³ In today’s context, “modern-day rival geography” may include the work and advocacy of groups that people who are incarcerated create and lead that focus on providing voting access and election information to others in prisons and jails, as well as organizations created and run by people with criminal convictions on the outside. In Maine, for example, people held in the prisons share crucial information and host registration drives, among other efforts, through the National Association for the Advancement of Colored People (NAACP) branch within the prison.²⁸⁴ Though considered restricted and restrictive spaces, volunteers’ electoral resistance within the prisons make the exclusionary voting zoning less obstructive.

Prison administrators and outside organizations recognized the power and importance of the NAACP prison branch’s work.²⁸⁵ And decisionmakers should not ignore their responsibility to include those that the exclusionary voter zoning has impacted directly and indirectly when developing inclusionary practices.²⁸⁶

To achieve inclusionary voter zoning holistically requires an explicit U.S. constitutional right to vote; an amendment that bans denying the vote to people with criminal convictions would confirm the power of the collective.²⁸⁷ With an explicit federal constitutional right in place, the ability

with *Felony Convictions*, BOLTS (Nov. 4, 2022), <https://boltsmag.org/north-carolina-rights-restoration-unlock-the-vote>.

²⁸² STEPHANIE M. H. CAMP, *CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH* 7 (2004).

²⁸³ *Id.*

²⁸⁴ Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 9 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>.

²⁸⁵ *Id.*

²⁸⁶ Government agencies should consider working with other advocates and lawyers to support voter turnout as well. Cory Sharber, *Pennsylvania Updates Guidance for Incarcerated Voters*, WHYY (Oct. 21, 2024, 12:25 PM), <https://whyy.org/articles/incarcerated-voters-pennsylvania-election-2024>.

²⁸⁷ Maureen A. Edobor, *Brnovich: Extratextual Textualism*, 26 *J. CONST. L.* 1495, 1552-55 (2024) (proposing language for a constitutional amendment that “round[s] out the

to zone people out of the electorate becomes harder. People with criminal convictions would have more authority to demonstrate governmental acts that limited their movement into voting spaces.²⁸⁸ Legislators and elected officials would have to explain any laws or policies they implemented that people alleged would zone them out of their political participation.

Because states would use their police power to implement an open electoral space, inclusionary voter zoning does not require a federal doctrine to achieve the goals. As such, the rest of this subsection identifies methods states and municipalities may use to foster inclusionary voter zoning.

In 2018, the Center for American Progress (CAP) issued a report with key measures every jurisdiction should take to increase voter turnout.²⁸⁹ Their election law reforms included implementing automatic voter registration (AVR) and same-day registration, increasing access to early voting and mail ballots without a need to provide a reason, and offering voter accessibility and election information.²⁹⁰ These policies would increase inclusionary voter zoning overall, and especially for people with criminal convictions. CAP cited Oregon's AVR process, which began in 2016, to make voter turnout more accessible.²⁹¹

Rather than having people go through the mail-in ballot registration and voting process, the jail in Washington, D.C., provides voting machines in the facility; people may vote in person.²⁹² A Colorado law requires proactive

electorate by eliminating state felon disenfranchisement laws (which operate as mass electoral suppression laws")); *see also* RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY 101, 128 (2024) (proposing draft constitutional amendment language); Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 SETON HALL L. REV. 201, 254-55 (2025) (emphasizing the need for a constitutional amendment to eliminate voter exclusion based on criminal convictions)

²⁸⁸ *See generally* RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY (2024) (examining the necessity of a constitutional amendment protecting the right to vote).

²⁸⁹ Danielle Root & Liz Kennedy, *Increasing Voter Participation in America*, CTR. FOR AMER. PROGRESS (July 11, 2018), <https://www.americanprogress.org/article/increasing-voter-participation-america>.

²⁹⁰ Other recommendations consisted of restoring the voting rights of people with incarceration histories, bolstering civics education, and voter outreach. *Id.*

²⁹¹ According to CAP, "[a]s a result of AVR, Oregon's electorate is now more representative of the state's population, as citizens registered through the program are younger, more rural, lower-income, and more ethnically diverse." *Id.* Because AVR depends on records people submit to the Department of Motor Vehicles, however, people without access to private vehicles or who cannot afford to pay for state identification through the DMV remain left out of this inclusionary voter zoning.

²⁹² *Implementation of Recommendations Regarding Restore the Vote Amendment Act 2020 as of 2024 General Election*, D.C. CORR. INFO. COUNCIL & BD. OF ELECTIONS, 8 (2024), https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/Voting%20Report

planning to give people detained in jails access to voting.²⁹³ In addition to onsite voter registration and making facilities official polling places, legislators should make voter restoration automatic, or at the very least, offer a simple application restoration process. The process should mandate a specific deadline by which the state must abide by when reviewing and granting people's voting rights restoration. Application deciders should include people who have also gone through the voter restoration process, so that they can hold the state accountable. In addition, the legislature should remove the risk of criminal prosecution when people believed, incorrectly, that they can vote and attempt to do so while ineligible because of their criminal convictions.²⁹⁴ Further incarceration because of their desire to be part of the political citizenry would not serve inclusionary voter zoning.

Proper notification and explanation of the voter restoration process by the government would signal to people with convictions that they are welcomed and encouraged to exercise their political power. Late last year, the Florida administration agreed to tell individuals whether they are eligible to vote, if they requested that information from the Department of State.²⁹⁵ While taking a step in positive direction, other states have taken a more proactive role in ensuring people know of their eligibility.²⁹⁶ In 2005, New Mexico

[t%204.2.25.pdf](#); *Report on Primary and General Elections*, D.C. DEP'T. OF CORR., 2 (2022), <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOC2022VotingReport.pdf>; *Inmate Voting Process*, D.C. DEP'T OF CORR., 9 (2025), <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.4%20Inmate%20Voting%20Process.%20OPP.%20DIRcopy%20%20wsig%209-17-25%20complete.pdf>.

²⁹³ Alex Burness, *Jail Voting Soars in Colorado After State Mandates Polling Places in County Lockups*, BOLTS (Mar. 4, 2025), <https://boltsmag.org/jail-voting-soars-in-colorado> (“Local officials had claimed they were already giving detained people ballot access, but the first-in-the-nation mandate forced their hands and increased turnout across the state.”).

²⁹⁴ For a discussion on why mistake of law defenses and heightened mens rea proposals will not be effective, see Carla Laroche, *Voter Emancipation in Slavery's Afterlife*, 56 *SETON HALL L. REV.* 201, 259 (2025).

²⁹⁵ Mitch Perry, *Floridians with Felony Convictions Can Now Contact the State to Learn if They are Eligible to Vote*, FLA. PHOENIX (Oct. 14, 2025, 1:33 PM), <https://floridaphoenix.com/2025/10/14/floridians-with-felony-convictions-can-now-contact-the-state-to-learn-if-they-are-eligible-to-vote>.

²⁹⁶ A future article will analyze the way that other countries allow people who are incarcerated to vote and have involved people who are incarcerated and not incarcerated in supporting political participation. For example, under Article 3 of Protocol No. 1 to the European Convention on Human Rights, member states must ensure free and fair elections. Article 3 of Protocol No. 1 to the European Convention on Human Rights states, “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” European Convention on Human Rights, page 35, https://www.echr.coe.int/documents/d/echr/Convention_ENG. The European Court of

made it a requirement that the Department of Corrections had to inform people of their eligibility to vote and let the Secretary of State know that individuals are eligible.²⁹⁷

Further, inclusionary voter zoning should include laws that hold elections officials accountable in helping people register and providing ballots. For example, Georgia law establishes strict deadlines that elections officials must follow to mail absentee ballots.²⁹⁸ In 2024, Georgia voters sought injunctive relief against the Cobb County Board of Elections and Registration after election officials admitted that they had not issued absentee ballots as the law

Human Rights has interpreted this provision to require signatories to hold an adversarial proceeding to determine whether a person loses their right to vote upon conviction of a criminal. *Hirst (n° 2) v. the United Kingdom*, [Grand Chamber judgment](#) of 6 October 2005, §§ 58-61, 69-71. For further discussion of the *Hirst* decision and the subsequent cases applying its holding, see *Fact Sheet – Prisoners’ Right to Vote*, EUR. CT. H. R., 4 (2022), https://www.echr.coe.int/documents/d/echr/FS_Prisoners_vote_ENG. They restore the vote automatically to people upon their release from incarceration. Voting is mandatory, so not voting would risk civil and/or criminal penalties, rather than the other way around. Martina Prpic, *Prisoners’ Voting Rights in European Parliament Elections*, EUR. PARL., 2 (2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI\(2023\)751459_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751459/EPRS_BRI(2023)751459_EN.pdf) (describing the various voting accessibility laws within member states of the European Union). A potential concern would be giving the court too much discretion that would allow bias and exclusionary voter zoning to influence restoration decisions. As this Article exposes, voting by geography inhibits people’s ability to vote. See *supra* Sect. II. According to The Sentencing Project, “Chile, Croatia, and the Netherlands,” among other countries, have made prisons official polling places, making some of the logistical issues nonexistent. Kristen M. Budd & Rachel Didner-Jollie, *Voting from Prison: Lessons from Maine and Vermont*, THE SENT’G PROJECT, 20 (2025), <https://www.sentencingproject.org/app/uploads/2025/07/Voting-From-Prison-Lessons-from-Maine-and-Vermont.pdf>. Other countries, like Canada and Germany, have over 90 percent registration rates, even though voting is not mandatory. HEATHER MCGHEE, THE SUM OF US 147 (2021); Maureen A. Edobor, *Brnovich: Extratextual Textualism*, 26 *J. Const. L.* 1495, 1556 (2024) (noting that requiring people to opt into voting “sets American democracy apart” from other democracies in the world). Australia, with its compulsory voting, has an almost 97 percent voter registration rate. HEATHER MCGHEE, THE SUM OF US 147 (2021). The country, however, excludes people with convictions from the ballot box depending on the length of their sentences and their location. *The Right to Vote is Not Enjoyed Equally by All Australians*, AUSTRALIAN HUM. RTS. COMM’N (2010), <https://humanrights.gov.au/resource-hub/by-resource-type/publications/rights-and-freedoms/policy-reports-rights-and-freedoms/right-vote-not-enjoyed-equally-all-australians>; *Prisoners*, AUSTRALIAN ELECTORAL COMM’N (Feb. 3, 2025), https://www.aec.gov.au/Enrolling_to_vote/special_category/Prisoners.htm.

²⁹⁷ Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, THE SENT’G PROJECT, 17 (2023), <https://www.sentencingproject.org/app/uploads/2024/03/Expand-the-Vote-State-Felony-Disenfranchisement-Reform-1997-2023.pdf>. Louisiana requires the Department of Public Safety and Corrections to notify people with convictions of their eligibility to vote as well. *Id.* at 14.

²⁹⁸ See GA. CODE ANN. § 21-2-384(a)(2) (2021).

provided.²⁹⁹ The trial court required the Board to extend the mailing deadline to receive mail-in ballots by several days as a result of the Board's failures.³⁰⁰ In inclusionary voter zoning, citizens would have a similar private right of action if the state government fails to support registration and ballot access to people with criminal convictions.³⁰¹

CONCLUSION

Legal scholars and journalists have analyzed and exposed how state legislatures have restricted access to the ballot box to eligible voters, especially those in systemically excluded communities, and quieted dissenters.³⁰² These voting controls help legislatures coalesce political power and dilute voters' interests.³⁰³ Limiting, rather than eliminating, exclusionary voter zoning would allow expansion of the voter restrictions in other places and communities.³⁰⁴ Though this Article focused on the disparities in access between Black and white individuals, exclusionary voter zoning applies to other systemically excluded groups with criminal records as well. As the non-reformist reforms concept holds, reforming the status quo may invite the implementation of different, not-yet-as-prominent types of voter zoning

²⁹⁹ *Ayota v. Fall*, No. 24GC08111, 2024 WL 4656718, at *1 (Ga. Super. Nov. 1, 2024); *Republican Nat'l Comm., Inc. v. Ayota* No. S25M0319, 2024 WL 4720145, at *2 (Ga. 2024).

³⁰⁰ *Ayota v. Fall*, No. 24GC08111, 2024 WL 4656718, at *6-8 (Ga. Super. Nov. 1, 2024); *Republican Nat'l Comm., Inc. v. Ayota* No. S25M0319, 2024 WL 4720145, at *5 (Ga. 2024).

³⁰¹ The federal Uniformed and Overseas Citizens Absentee Voting Act authorizes the Attorney General to sue election administrators for failing to follow ballot requirements to people seeking to vote while overseas, including members of the military. Uniformed & Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20307(a) (2009).

³⁰² Robert Downen, *It's Not Just Redistricting. Here Are All the Ways the Texas GOP Is Consolidating Power.*, TEXASMONTHLY (Sept. 8, 2025), <https://www.texasmonthly.com/news-politics/texas-gop-power-grab> (“Redrawing congressional maps for Trump is just one part of a decades-long attempt to end fair elections in the state.”); Hansi Lo Wang, *A GOP Push To Restrict Voting by Overseas U.S. Citizens Continues Before 2026 Midterms*, NPR (Oct. 1, 2025, 5:00 AM), <https://www.npr.org/2025/10/01/nx-sl-5542344/overseas-active-duty-military-voting-uocava>.

³⁰³ Michael Waldman, *The Lasting Effects of Voter Suppression*, BRENNAN CTR. FOR JUST. (May 28, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/lasting-effects-voter-suppression>; *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, AM. C.L. UNION, <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020> (last visited on Mar. 4, 2026); Joshua Clark, *Widening the Lens on Voter Suppression: From Calculating Lost Votes to Fighting For Effective Voting Rights*, HASS INSTITUTE FOR A FAIR & INCLUSIVE SOC'Y AT UNI. CAL. BERKELEY, 15 (2018), https://belonging.berkeley.edu/sites/default/files/haas_institute_wideningthelensonvotersuppression_july2018_publish.pdf?file=1&force=1.

³⁰⁴ Ekow N. Yankah, *Deputization and Privileged White Violence*, 77 *STAN. L. REV.* 703, 769-73 (2025) (expansion to other places and communities).

against people with criminal convictions.³⁰⁵ Avoiding the expansion of the exclusionary practices requires addressing barriers to the right to vote and accessing the vote for all.

Inclusionary voter zoning is ultimately not about an individual voter; it is about democratic accountability. When people with convictions are excluded from the electorate, candidates and policymakers face no electoral incentive to address the interests of people most directly subjected to the criminal legal system's operations. And a political process from which those most harmed by exclusion have been removed cannot be trusted to remedy its own exclusions.

Because of our current political landscape, which includes diluting the votes of communities of color, is inclusionary voter zoning possible? Is it naïve to propose this framework when our electoral system is going in the opposite direction?³⁰⁶ To both questions, I answer yes. Yes, inclusionary voter zoning is possible, and yes, it is a naïve idea. Though those answers may seem to conflict, they do not. Poet Langston Hughes's powerful words guide me in this conviction. In the poem "I, Too," a Black person describes how white people treat them poorly, yet they do not fall into despair.³⁰⁷ Rather, the narrator chooses joy and confidence in their identity.³⁰⁸ The speaker predicts, confidently, that society will affirm their equal status one day.³⁰⁹ The narrator knows that those who reject them today will regret it because "I, too, am America."³¹⁰

Even though exclusionary voter zoning exists currently, it is possible for inclusionary voter zoning to occur. It is our responsibility to bear witness to the injustices today and to work to create a more just voting system. Advocating for increased voter rights may seem silly in the face of powerful

³⁰⁵ Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2568 (2023).

³⁰⁶ See Michael Scherer et al., 'The Trust Has Been Absolutely Destroyed', ATL. (Feb. 8, 2026), <https://www.theatlantic.com/politics/2026/02/trump-gabbard-election-investigations-states/685922>; Samuel Benson, *A MAGA push to erase a Dem House seat is triggering accusations of fraud and violence in Utah*, POLITICO (Feb. 7, 2026 12:00 PM), <https://www.politico.com/news/2026/02/07/trump-backed-redistricting-initiative-in-utah-goes-sideways-00767959>.

³⁰⁷ Langston Hughes, *I, Too*, in THE COLLECTED POEMS OF LANGSTON HUGHES (Arnold Rampersad & David Roessel eds., 1994).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* The idea of including *I, Too*, came while I was working on this Article at a Black-owned independent coffee shop and bookstore, Baldwin & Co., in New Orleans, Louisiana. *About Us*, BALDWIN & CO., <https://www.baldwinandcobooks.com/about> (last visited Aug. 3, 2026). Painted on the wall directly behind me was an image of Langston Hughes alongside his poem. I appreciate that Baldwin & Co. has been a source of inspiration for so many writers and thinkers.

political forces. Yet, to implement the inclusionary voter zoning measures I propose would entail resisting the tangible and intangible barriers to the vote for all. And having this type of voting environment requires a collective appreciation of the value of including people with criminal convictions in the electorate, for they, too, are America.

DRAFT

Voter Emancipation in Slavery's Afterlife

Carla Laroche*

ABSTRACT

From slavery to the present day, Black women have used legal tools and advocacy to free themselves from the bondage and oppression they face due to their unique racial and gendered status. Building upon historian Saidiya Hartman's "afterlife of slavery"—a concept that explains how the laws and norms that supported slavery have continued in debilitating forms after the Civil War—this Article employs a novel analysis that situates Black women's past and current resistance within the criminalization of their exercise of political power today. The Article draws a through-line from slavery to voter-exclusion by examining legal disregard of Black women to frame a taxonomy of legal

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resistance. In this taxonomy, the proactive class examines the experiences of Black women who sought emancipation during slavery and voter emancipation in slavery's afterlife by bringing lawsuits and running for office. The reactive class includes Black women who used the legal system to defend against re-enslavement and reincarceration; their defiance springs out of other people's unjust actions against them. This resistance taxonomy highlights Black women's long history of perseverance, emphasizes how their freedom remains elusive, and confirms the need for change. The Article then proposes measures to obtain voter emancipation and to support a broader movement toward dismantling the afterlife of slavery.

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INTRODUCTION

Soon after U.S. Vice President Kamala Harris declared her intent to seek the Democratic Party's presidential nomination on July 22, 2024,¹ her opponents used racist and sexist rhetoric to attack her candidacy.² Then Republican Party nominee for the 2024 election,

¹ On July 21, 2024, President Joe Biden, the presumptive nominee for the Democratic party, announced that he would end his campaign for re-election. Deepa Shivaram, *Biden Drops Out of 2024 Reelection Race, Endorses Harris for Nominee*, NPR (July 21, 2024, at 20:14 ET), <https://www.npr.org/2024/07/21/nx-s1-5024253/biden-drops-out-2024-presidential-election>. That same day, and just over 100 days before the November 2024 presidential election, President Biden endorsed Vice President Harris. *Id.*

² Barbara Rodriguez, *Racist, Misogynist Online Disinformation is Already Being Used Against Kamala Harris' Campaign*, 19TH NEWS (July 24, 2024, at 13:33 ET), <https://19thnews.org/2024/07/racist-misogynist-online-disinformation-is-being->

Donald Trump, asserted that Vice President Harris, the first Black and Asian woman presidential nominee of a major political party, “‘was Indian all the way’ before ‘all of a sudden she made a turn’ and ‘became a Black person.’”³ Other Republican elected officials and supporters called Vice President Harris a “DEI⁴ vice president,” “insane,” and “mediocre;” claimed she received the nomination “because she’s female and her skin color is the correct DEI color;” and mispronounced her name.⁵ While Republicans have noted the

used-against-kamala-harris-campaign (“[P]osts, shared on popular social media platforms, have primarily focused on sexualized and racist narratives about Harris, including claims about her dating history and her eligibility to be president.”); Hillary Rodham Clinton, *Hillary Clinton: How Kamala Harris Can Win and Make History*, N.Y. TIMES (July 23, 2024), <https://www.nytimes.com/2024/07/23/opinion/kamala-harris-donald-trump.html> (“Ms. Harris will face unique additional challenges as the first Black and South Asian woman to be at the top of a major party’s ticket. That’s real, but we shouldn’t be afraid.”); Brandon Tensley, *Presidential Debate Preview: Harris vs. Trump*, CAPITAL B (Sept. 9, 2024), <https://capitalbnews.org/harris-debate-preview> (“In August, the former president reposted a remark on Truth Social, his social media platform, that implied that Harris had exchanged sexual favors for political advancement. (He shared a similar comment less than two weeks before.)”).

³ Brianna Tucker & Hannah Knowles, *Trump Attacks Harris’s Black Identity. Harris Says Americans ‘Deserve Better.’*, WASH. POST (July 31, 2024), <https://www.washingtonpost.com/politics/2024/07/31/trump-black-voters-nabj-harris>. While this Article focuses on the policing of Black women, specifically in political, electoral, and legal spaces, Republicans also seemed to target Vice President Harris’s Asian identity by mispronouncing her first name, claiming her house smelled, and questioning her loyalties to the United States. John McWhorter, *What Trump Means When He Mispronounces ‘Kamala,’* N.Y. TIMES (Aug. 1, 2024) (“The Trumpian attitude toward Harris’s Indian name reanimates an old American trope. Instead of opening up to a foreign word and even exploring it a little, Trump is treating it as an alien presence in need of assimilation, telling it to conform to whatever he decides it should be.”); Marianne LeVine et al., *Trump Portrays Harris as Foreign, Echoing Past Attacks on Democrats of Color*, WASH. POST (Aug. 19, 2024), <https://www.washingtonpost.com/politics/2024/08/19/trump-speech-pa-event-dnc> (quoting Trump’s questioning where Harris “came from” and referring to her policies as “regulatory jihad”).

⁴ DEI stands for “Diversity, Equity, and Inclusion.” *DEI*, Cambridge Dictionary (last accessed Jan. 24, 2025), <https://dictionary.cambridge.org/us/dictionary/english/dei>.

⁵ Amanda Terkel, *‘Dumb’ and a ‘DEI’ Candidate: Trump and Allies Attack Kamala Harris Based On Her Race, Gender*, NBC NEWS (updated July 24, 2024, at 9:55 ET), <https://www.nbcnews.com/politics/2024-election/republican-attacks-kamala-harris-center-race-gender-dumb-dei-candidate-rcna162570>; *Kamala Harris Already Faces Racism and Sexism from Trump and Republicans*, NPR: CONSIDER THIS (July 24, 2024, at 18:30 ET), <https://www.npr.org/2024/07/24/1198912958/kamala-harris-donald-trump-racism-sexism-rhetoric-presidential-campaign>; Chelsea Bailey, *A GOP Congressman Called Kamala Harris a ‘DEI Hire.’ Some Caution It’s a Sign of What’s to Come*,

ineffectiveness of these race- and gender-based attacks, the derogatory comments continued throughout the election period.⁶

Knowing the attacks she had already faced and would face, it was no accident that Vice President Harris selected the song “Freedom”⁷ to play as she walked across the stage to give her first public speech on seeking the nomination on July 22, 2024, and in her first campaign video on July 25, 2024.⁸ The Beyoncé Knowles song, released in 2016, aligned with Vice President Harris’s campaign themes of “fight” and “freedom.”⁹ The song upholds self-determination, advocates breaking chains that immobilize, and uplifts the fight for freedom while also highlighting the racist and gendered tropes the United States imposes on Black women.¹⁰ As one 2016 review emphasized, “Freedom” is “a song that roars like thunder, and threatens to topple governments in its wake”;¹¹ it is a song about the subjugation of Black women and their

CNN (July 23, 2024, at 18:15 ET), <https://www.cnn.com/2024/07/23/politics/kamala-harris-burchett-dei-hire-backlash>.

⁶ Marianne LeVine & Josh Dawsey, *Trump Allies Want to Hit Harris’s Record. He Keeps Talking About Her Race and Gender.*, WASH. POST (Aug. 1, 2024), <https://www.washingtonpost.com/politics/2024/08/01/trump-harris-race-gender-record/> (noting that Trump allies have admitted the racist and sexist comments will not help his campaign). Republican Speaker of the U.S. House of Representatives Mike Johnson resorted to recommending that his party focus their critiques on her policies, likely recognizing the poor impact the racialized and gendered attacks had on potential voters. Juliegrace Brufke, *Johnson Seeks to Quash “DEI Hire”-Type Attacks on Harris*, AXIOS (Jul. 4, 2024), <https://www.axios.com/2024/07/24/republicans-pushback-dei-attacks-harris>.

⁷ BEYONCÉ KNOWLES, *Freedom* (feat. Kendrick Lamar), on *Lemonade* (Apple Music, Parkwood Ent./Columbia Recs. Sept. 9, 2016).

⁸ Hannah Dailey, *Kamala Harris Promises Voters ‘Freedom’ with First Campaign Video Featuring Uplifting Beyoncé Song*, BILLBOARD (July 25, 2024), <https://www.billboard.com/music/music-news/kamala-harris-beyonce-freedom-first-campaign-video-1235739699>.

⁹ Jennifer Gerson, *Nothing About This Feels Like A 10-Day-Old Campaign*, 19TH NEWS (July 31, 2024, at 13:35 ET), <https://19thnews.org/2024/07/kamala-harris-10-day-old-campaign-full-swing>. Freedom contains a “sample of an old Negro prison song” and the words of the ninety-year-old grandmother of Knowles’ husband, Jay-Z, stating, “I had my ups and downs, but I always had the inner strength to pull myself up.” Britt Julious, *“Freedom” [ft. Kendrick Lamar]*, PITCHFORK (Apr. 27, 2016), <https://pitchfork.com/reviews/tracks/18214-beyonce-freedom-ft-kendrick-lamar>.

¹⁰ KNOWLES, *supra* note 7.

¹¹ *Beyoncé, Lemonade Review: Fiery, Insurgent, Fiercely Proud, Sprawling and Sharply Focused*, INDEPENDENT (Apr. 26, 2016), <https://www.independent.co.uk/arts-entertainment/music/reviews/beyonce-lemonade-review-fiery-insurgent-fiercely-proud-sprawling-and-sharply-focused-a7001291.html>.

efforts to achieve emancipation. In Vice President Harris's case, "Freedom" demanded that people recognize that she was ready to fight for her political success and freedom, even in the face of baseless racial and gendered attacks.¹² Vice President Harris's decision to use the song situated her within a long history of Black women who resist; her resistance connected her with other Black women from earlier generations who defied those who suppressed their political power on the same basis that bound them in slavery:¹³ because of their race and gender.¹⁴

In examining resistance through Black women's past and present legal cases, this Article illustrates how the acts of resistance Black women perform today mirror the tools Black women used during slavery. My comparison between the past and present shows that the oppression Black women face and the power they gain from resisting it are not new. This Article focuses on Black women's use of the law and legal system to elevate their resistance outside of the private sphere

¹² As author Austin Channing Brown demanded of readers while communicating the types of intersectional attacks Vice President Harris would endure during the campaign,

I need you to recognize the hits Black women might be taking over the next three months. I need you to look racism/sexism square in the face and call it what it is when you see it. I need you to be prepared for it. Because the fight won't only be at the ballot box for us. We are still fighting for our lives, for our dignity.

Austin Channing Brown, *My. My. My.*, SUBSTACK (July 21, 2024), <https://austinchanning.substack.com/p/my-my-my>; see also Brandon Tensley, *Presidential Debate: Harris Faces a Unique Burden as a Black Woman*, CAPITAL B NEWS (Sept. 9, 2024), <https://capitalbnews.org/harris-debate-preview>.

¹³ I will use "slavery" to refer to systems and institutions of U.S. enslavement and "enslaved people" and "people who were enslaved" to refer to the Black people who were held in captivity for profit and production. For more discussion on terminology, see Daniel Farbman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877, 1878 n.1 (2019) ("The human beings at the heart of this story (and of all stories about slavery) cannot and should not be reduced to a label that bears the stigma of oppression.").

¹⁴ SUZANNE LEB SOCK, *THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A SOUTHERN TOWN, 1784–1860* 72 (1984) ("On the one hand, we have been told that Black women, in slavery and afterward, were formidable people, 'matriarchs,' in fact. And yet we know that all along Black women were dreadfully exploited. Rarely has so much power been attributed to so vulnerable a group."); Angela Onwuachi-Willig, *The Long and Winding Road from Shirley Chisholm to Kamala Harris to . . .*, BU TODAY (Nov. 21, 2024), <https://www.bu.edu/articles/2024/shirley-chisholm-to-kamala-harris>; Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1377 (1988); Erica L. Green & Maya King, *For Black Women, 'America Has Revealed to Us Her True Self'*, N.Y. TIMES (Nov. 8, 2024), <https://www.nytimes.com/2024/11/07/us/politics/harris-black-women.html>.

of the plantation during enslavement¹⁵ and to contrast the use of the legal system to criminalize Black women today, particularly in the context of voting rights for and voter exclusion of Black women.¹⁶ I connect enslavement and voter exclusion because both served or serve as barriers to full political participation in the United States.

I developed a taxonomy—a “resistance taxonomy”—of Black women’s acts of resistance to better analyze how their current efforts to reclaim their civic identities echo a similar practice of resistance during slavery. My resistance taxonomy distinguishes proactive resistance and reactive resistance. Proactive resisters are Black women who plan and work to reduce or eliminate the oppression they endure; they engage in political and legal actions that alert society that their aim is to change the status quo. Reactive resisters are Black women who must defend themselves in response to an unexpected targeting. Unlike proactive resisters, reactive resisters do not engage in practices they believe would result in direct legal changes, but, upon facing injustice, they work to hold those in power accountable. Both classes are important to resistance; neither is more valued nor respected than the other. Further, proactive and reactive resistance are not mutually exclusive and may overlap; a person may begin her resistance as a member of one class and then choose or be forced into the other. In this Article, the cause of their initial resistance determined which class I placed the women in, even if they exhibited characteristics in both categories subsequently.¹⁷

¹⁵ STEPHANIE M. H. CAMP, CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH 2–4 (2004) (noting that much of the documented resistance occurred within plantation boundaries).

¹⁶ I recognize the limitations in focusing on the use of the legal system that allows the oppression and criminalization of Black women. That said, highlighting Black women’s navigation of the legal system allows us to “reclaim what was underneath [our history] and decolonize our present.” DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM 91 (2021); *see also* JUDITH KELLEHER SCHAFER, BECOMING FREE, REMAINING FREE: MANUMISSION AND ENSLAVEMENT IN NEW ORLEANS 1846–1862, xiv (2003) (noting Black people using “the very laws that supported slavery” to protect their “free” status during slavery).

¹⁷ To some readers, this resistance taxonomy, whether proactive or reactive, may be construed as synonymous to the “angry Black woman” trope. *See* Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2050 (2017) (“Black women know that to push back—to exercise voice—inevitably means that any positive stereotypes to which they may be subject (however slim they may be) will immediately elide into the negative.”). In this Article, I offer a holistic and nuanced description on the paths several Black women have taken to defend themselves. They are attempting to survive in a world aimed at enslaving or disempowering them. In addition, my aim is not to

In the proactive category, this Article analyzes the cases of Elizabeth Freedman and Pamela Moses. Ms. Freedman filed a successful freedom suit¹⁸ arguing that her enslavement violated the Massachusetts Constitution, while represented by a white male lawyer, and Ms. Moses sought to run for mayor in Tennessee and was convicted of registering to vote while ineligible because of a probation officer's actions, serving eighty-two days of a six-year-sentence before her charges were dismissed.¹⁹ In the reactive class, I examine the cases of Henrietta Wood—who, after being freed by her white enslaver, was kidnapped back into slavery, filed and lost her freedom suit, and eventually won a lawsuit against and received reparations from the white kidnapper—and Crystal Mason—who did not know she was ineligible to vote in Texas because she was on federal supervised release, cast a provisional ballot in 2016, and was sentenced to five years in prison on voter fraud charges, remaining in legal limbo as her case goes up and down the state appellate process.²⁰ The analysis of these Black women's past and current experiences demonstrates the true horror of resisting oppression some 150 years after the end of the Civil War.²¹

Historian Saidiya Hartman, who developed the concept of the afterlife of slavery to connect the threads of slavery that still exist in the

continue the Black superwoman trope through the elevation of these individuals' actions. Instead, this Article exposes how Black women must work to resist the criminalization they endure as they try to activate their political and voting power and diminish oppression.

¹⁸ A freedom suit was a lawsuit filed on behalf of a person who was enslaved alleging that the person should not be enslaved. See LOREN SCHWENINGER, *APPEALING FOR LIBERTY: FREEDOM SUITS IN THE SOUTH* (2018) (providing a review of lawsuits by Black people seeking freedom through the courts); Rafael I. Pardo, *Financial Freedom Suits: Bankruptcy, Race, and Citizenship in Antebellum America*, 62 ARIZ. L. REV. 125, 129 (2020).

¹⁹ Sam Levine, *The Untold Story of How a US Woman was Sentenced to Six Years for Voting*, THE GUARDIAN (Dec. 27, 2022) <https://www.theguardian.com/us-news/2022/dec/27/pamela-moses-voting-rights-mistake-jail> (quoting a statement by the district attorney that indicated Ms. Moses has spent eighty-two days incarcerated).

²⁰ Express-News Editorial Bd., *Editorial: Effort to Reinstate Crystal Mason's Voter Fraud Conviction is Vindictive*, SAN ANTONIO EXPRESS-NEWS (May 12, 2024), <https://www.expressnews.com/opinion/editorial/article/mason-wrongful-prosecution-voter-fraud-19449914.php>.

²¹ As historian Stephanie Camp professed, focusing on Black women's work "is essential to excavating bondwomen's resistance to slavery because women's history does not merely add to what we know; it changes what we know and how we know it." CAMP, *supra* note 15, at 3.

United States in different forms today,²² has noted that her evaluation of people's resistance during enslavement and its afterlife "has received less attention."²³ This Article does that. Centering Black women's resistance allows for a critical framing of the laws and policies that have supported slavery and its afterlife. Prior legal scholarship has emphasized the power of resistance within social justice.²⁴ This Article builds on this literature that explores "all of the places where [the law] can be undone and remade" by centering the experiences of Black women who used the legal system to resist racial and gendered oppression during slavery and today.²⁵ Their efforts aim to change the legal landscape for themselves and to the benefit of others.

In Part I of this Article, I reconstitute the narrative of how Black women experienced gendered attacks during slavery and dissect how Hartman's description of slavery, its power, and its afterlife contribute to the exclusion of Black women with criminal convictions from the ballot box today.

In Part II, I describe the goals of emancipation that existed during slavery and its afterlife briefly. Then, building upon what Hartman described as everyday practices of resistance during slavery, I establish a resistance taxonomy by surveying the types of resistance that Black women who were enslaved exhibited and Black women who are excluded from the ballot box today employ. This Part analyzes the efficiency of diverse types of modern-day resistance on Black women's demands for justice and fair treatment.

For Black women who seek to run for office, register to vote, or submit a provisional ballot, "where ambiguity exists about an

²² SAIDIYA HARTMAN, *THE HOLD OF SLAVERY* 5 (updated ed. 2022) ("The conviction that I was living in the world created by slavery propelled the writing of . . . my first book The hold of slavery was what I sought to articulate and convey.").

²³ See Saidiya Hartman, *The Hold of Slavery*, N.Y. REV. OF BOOKS (Oct. 24, 2022), <https://www.nybooks.com/online/2022/10/24/the-hold-of-slavery-hartman>.

²⁴ For example, legal scholar Amna A. Akbar explained in *Non-Reformist Reforms and Struggles over Life, Death, and Democracy* that legal analysis must go beyond what the law states. Understandings of the law must include investigations of its impact on people and how people's resistance influences those laws. Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2563 (2023) ("We should proliferate our understanding of where law takes shape and in relation to what, who acts on it, who it acts on, who benefits, who loses, and who resists—and how resistance individual and collective reshapes law."). In *Resistance Lawyering*, legal scholar Daniel Farbman analyzed the methods white male lawyers used to attack laws that furthered the institution of slavery and applied them to today's social justice lawyers. See Farbman, *supra* note 13.

²⁵ Akbar, *supra* note 24, at 2563.

individual's eligibility to vote, the individual is forced to gamble with their liberty."²⁶ Two choices exist: either engage and risk criminal prosecution or not engage and live in a state of exclusion. The consequences to Black women, families, and communities are too vast and grave, and the government must address the harmful status quo.

Part III offers several proposals to emancipate Black women, and others, from voter exclusion based on criminal convictions²⁷ in the afterlife of slavery through its elimination. At the very least, changes should include decriminalizing the disenfranchisement maze²⁸ and ensuring that states provide notice of ineligibility and due process to individuals who, according to the states, have voted while ineligible. This Article advocates for true voter emancipation, meaning all people may engage in the political process unencumbered, including Black women with criminal records.²⁹ My analytical frame and resistance taxonomy offer more compelling support that, ultimately, real voter emancipation requires a legal system and society without racial and gendered oppression, and it demands liberation from the afterlife of slavery in all its forms.

²⁶ Brief for Appellant at 41, *Mason v. State*, 663 S.W.3d 621 (Tex. Crim. App. 2022) (No. PD-0881-20).

²⁷ I use the term "voter exclusion based on criminal convictions" rather than the more commonly used term "felony disenfranchisement" because it is more descriptive. In certain states—Indiana, Illinois, Michigan, Utah, South Carolina, and Kentucky—people lose their voting rights if they are convicted of a misdemeanor. U.S. DEP'T JUST. C.R. DIV. GUIDE TO STATE VOTING RULES THAT APPLY AFTER A CRIMINAL CONVICTION 2, 8, 11, 19, 45 (2024), [https://www.justice.gov/crt/media/1332106/dl?inline=](https://www.justice.gov/crt/media/1332106/dl?inline=1) (recognizing that states disenfranchise people convicted of misdemeanor offenses).

²⁸ I apply the term "disenfranchisement maze" to represent both the intricate processes people must follow to restore their voting rights that states have implemented *and* how people's ability to vote with a criminal conviction vary across the nation. See Carla Laroche, *Black Women and Voter Suppression*, 102 B.U. L. REV. 2431, 2438–39 (2022); see also ERIKA WOOD & RACHEL BLOOM, ACLU & BRENNAN CTR. FOR JUST., DE FACTO DISENFRANCHISEMENT 8–9 (2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf>. The maze includes those around the country who cannot vote while in prison, those whose vote is automatically restored upon completion of their sentence, and those with lifetime bans. See U.S. DEP'T JUST. C.R. DIV., *supra* note 27, at 2. Geographically, for example, one person with a felony conviction may be able to vote upon release from incarceration in New York, but they would have to complete any court-imposed post-release supervision—probation or parole—and legal financial obligations—fines, fees, court costs, and restitution—if seeking to register to vote in Florida. *Id.* at 6, 40–41.

²⁹ See *infra* Part II.A for further discussion of the term "voter emancipation."

I. BLACK WOMEN IN SLAVERY & ITS INCARCERATION AFTERLIFE

As Thomas Paine wrote, “[T]o take away [the right to vote] is to reduce a [person] to a state of slavery, for slavery consists in being subject to the will of another.”³⁰ To vote is to exercise political agency and liberty. Voting allows people to signal to decisionmakers their interests and hopes for themselves, their families, and their communities.³¹ To allow for the fullest expression of that political power, one would expect all within the United States to be able to vote. Yet the explicit right to vote is not enshrined in the U.S. Constitution,³² and, throughout the country’s history, various groups of people have not been able to access their voting rights.³³ Black women are one such group of people who have faced racism, sexism, and other forms of discrimination while being denied access to the ballot box.³⁴ Further, Black women excluded from the ballot box because of their criminal records face particular and unique harms when they cannot vote to express their political and family interests.

Denying a person’s right to vote because of a criminal offense embodies a form of enslavement in the afterlife.³⁵ Rosemary McCoy, a

³⁰ Brief for Appellant at 1, *Jones v. Governor of Fla.*, 15 F.4th 1062 (11th Cir. 2021) (No. 20-12304) (quoting THOMAS PAINE, *DISSERTATIONS ON FIRST PRINCIPLES OF GOVERNMENT* 19 (Paris, Eng. Press 1795)); see also, ERIC FONER, *THE STORY OF AMERICAN FREEDOM* 29 (1998) (noting “slavery was primarily a political category, shorthand for the denial of one’s personal and political rights by arbitrary government” under eighteenth century analysis); Nicholas Serafin, *Redefining the Badges of Slavery*, 56 U. RICH. L. REV. 1291, 1318–22 (2022) (examining the “republican conceptual framework” used in the eighteenth and nineteenth centuries to understand slavery and badges of slavery to include people and communities subordinated to the will of another).

³¹ Zina Makar, *Detention, Disenfranchisement, and Doctrinal Integration*, 95 S. CAL. L. REV. 365, 366–67 (2021); Laroche, *supra* note 28, at 2476–81.

³² *Created Equal: The Right to Vote Wasn’t Included in the Constitution. Why Not?*, WDET (Feb. 28, 2024), <https://wdet.org/2024/02/28/the-right-to-vote-wasnt-included-in-the-constitution-why-not>.

³³ See generally GILDA R. DANIELS, *UNCOUNTED: THE CRISIS OF VOTER SUPPRESSION IN AMERICA* (2020) [<https://doi.org/10.18574/nyu/9781479883479.001.0001>] (analyzing the use of different methods to exclude people from the ballot box); *Voting Rights Throughout United States History*, NAT’L GEOGRAPHIC (Oct. 19, 2023), <https://education.nationalgeographic.org/resource/voting-rights-throughout-history> (same); *Voting and Civic Engagement: History of Voting in America*, UNI. N. TEX. (last updated July 22, 2025), <https://guides.library.unt.edu/voting/history-of-voting-America> (same).

³⁴ Laroche, *supra* note 28, at 2447.

³⁵ Shadman Zaman, Note, *Violence and Exclusion: Felon Disenfranchisement as a Badge of Slavery*, 46 COLUM. HUM. RTS. L. REV. 233, 234 (2015) (reasoning that banning

Black woman and voting rights advocate who cannot vote in Florida because of prior convictions, recognized the power and purpose of voting and exclusionary voting laws: “There’s only one purpose of taking your voting rights away from you, and that is so that you can be a slave. No one can change my mind about this If a woman is a slave, her children and grandchildren are a slave.”³⁶ The barriers to the ballot box have led to what legal scholar Monica C. Bell describes as legal estrangement, or the indication that Black women “are not fully part of American society.”³⁷ Without access to the ballot box, as Ms. McCoy noted, people with criminal convictions remain excluded from consideration and unfree.³⁸

Only Vermont, Maine, the District of Columbia, and Puerto Rico grant people the right to vote without regard to their incarceration status or criminal convictions.³⁹ These jurisdictions offer voting

people from voting because of their convictions imposes a badge of slavery on them under the Thirteenth Amendment).

³⁶ Ko Bragg, *Courts Asked to Analyze “Undue Burden” of Florida’s Felony Disenfranchisement Law on Black Women*, THE 19TH (Feb. 13, 2021, at 8:00 ET), <https://19thnews.org/2021/02/courts-analyze-undue-burden-floridas-felony-disenfranchisement-law-black-women>.

³⁷ Laroche, *supra* note 28, at 2481 (quoting Monica C. Bell, *Legal Estrangement: A Concept for These Times*, FOOTNOTES (Am. Socio. Ass’n, Washington, D.C.), July-Aug. 2020, at 7, 8, https://www.asanet.org/wp-content/uploads/attach/footnotes/footnotes_july-august_2020.pdf).

³⁸ *Id.* at 2481 (“To endure legal estrangement is to recognize that society neither appreciates nor desires the value their votes should offer.”); *see also id.* at 2481 n.323 (providing an example of exclusion of a person with a criminal conviction). Although the focus of this Article is voting, the exclusion from social membership and access to rights and justice goes beyond the ballot box. *Id.* at 2481; DANIELS, *supra* note 33. *See generally* COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES, U.S. COMM’N ON C.R. (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> (providing an overview of the collateral consequences people with criminal convictions endure).

³⁹ *50-State Comparison: Loss & Restoration of Civil/Firearms Rights*, COLLATERAL CONSEQUENCES RES. CTR.: RESTORATION OF RTS. PROJECT (Dec. 2021), <https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges>. Of the four jurisdictions listed, two—Washington, D.C., and Puerto Rico—have limited representation on the federal level, and the other two—Vermont and Maine—have less numerical power in the U.S. House of Representatives. LUIS FUENTES-ROHWER & GUY-URIEL CHARLES, AM. CONST. SOC’Y, *THE US CONSTITUTION MEETS DEMOCRATIC THEORY: THE PUZZLING CASES OF PUERTO RICO AND D.C.* 1–2, (2020), <https://www.acslaw.org/wp-content/uploads/2020/03/Puerto-Rico-DC-Statehood-Final-Draft-March-27.pdf>; J. Gordon Hylton, *How Much Difference Does the Small State Advantage in the Electoral College Really Make?*, MARQUETTE UNI. L. SCHOOL FACULTY BLOG (Mar. 8, 2010),

freedom to those who live there. At the same time, other states have confusing processes people must follow to obtain the restoration of their voting rights after a conviction.⁴⁰ If individuals misstep while attempting to restore their voting rights, they face potential criminal prosecution should they vote or attempt to register to vote.⁴¹ The shadow of the afterlife of slavery includes requiring people to navigate this disenfranchisement maze to obtain the freedom to vote and fear of their criminalization through voting.

Saidiya Hartman has asked the question, “What did it mean to exist between the ‘no longer’ enslaved and the ‘not yet’ free?”⁴² Black women endured targeted violence during slavery, and the impact of intersectional exploitation has continued through the criminal legal system and its voter exclusion.⁴³ Though Black women no longer endure direct enslavement, they nevertheless experience a less than free existence within the legal system.

A. *Black Women’s Experiences*

My focus on Black women’s experiences and achieving true voter emancipation is not an effort to diminish the inhumanity of slavery that Black people of all genders faced.⁴⁴ This Article builds on the work

<https://law.marquette.edu/facultyblog/2010/03/how-much-difference-does-the-small-state-advantage-in-the-electoral-college-really-make>.

⁴⁰ Laroche, *supra* note 28, at 2455–57 (describing the history of voter suppression based on criminal convictions).

⁴¹ CHRISTOPHER UGGEN, RYAN LARSON, SARAH SHANNON, ROBERT STEWART & MOLLY HAUF, SENT’G PROJECT, LOCKED OUT 2024: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 15–16 (2024), <https://www.sentencingproject.org/app/uploads/2024/10/Locked-Out-2024-Four-Million-Denied-Voting-Rights-Due-to-a-Felony-Conviction.pdf> (describing Florida’s efforts “to deter voting” by charging people with convictions with voter fraud close to the 2022 midterm election).

⁴² HARTMAN, *supra* note 22, at 12.

⁴³ *Id.* at 11 (including “the forms of gendered and sexual violence” as part of slavery and its power).

⁴⁴ This Article recognizes that “[m]en make up 90%” of the people incarcerated in the United States. COUNCIL ON CRIM. JUST., WOMEN’S JUST. COMM’N, STRONGER FAMILIES, SAFER COMMUNITIES: IMPROVING OUTCOMES FOR WOMEN AT THE FRONT END OF THE JUSTICE SYSTEM (2025), <https://reports.counciloncj.org/wjc-report/introduction>. Black men, in particular, represent a disproportionate share of that population, their rates of incarceration are higher than any other race and gender. *See* ASHLEY NELLIS, SENT’G PROJECT, MASS INCARCERATION TRENDS 6 (2024), <https://www.sentencingproject.org/reports/mass-incarceration-trends>; Leah Wang, *Updated Charts Show the Magnitude of Prison and Jail Racial Disparities, Pretrial Populations*,

of other legal scholars in analyzing how Black women have responded to the denial of access to political power and legal systems because of their unique resistance tailored to their unique harms. For example, legal scholar Kimberlé Crenshaw coined the term intersectionality to explain how the law “treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Black [people].”⁴⁵ Further, Patricia A. Broussard exposed the pathology of white people who oppress, enslave, and detain Black women. Broussard explained that, to understand why society devalues Black women, one must examine “the pathology of slavery.”⁴⁶ The need to subjugate and enslave Black women for profit required that “white Christian enslavers” push racist and sexist tropes.⁴⁷ Stereotypes have remained in the nation’s consciousness to the benefit of those who attack Black women, even though these stereotypes are without veracity.⁴⁸ Broussard also notes that many people erase Black women from history and display cultural disrespect because of the power Black women have shown in surviving continuous degradation.⁴⁹ The fear of that power, Broussard reasons, has led to “the need to neuter it at every turn,”

Correctional Control, and More, PRISON POL’Y INITIATIVE (Apr. 1, 2024), <https://www.prisonpolicy.org/blog/2024/04/01/updated-charts>.

⁴⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 150 (1989); *Kimberlé Crenshaw on Intersectionality, More than Two Decades Later*, COLUM. L. SCH. (June 8, 2017), <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> (describing intersectionality as a “lens through which you can see where power comes and collides, where it interlocks and intersects. It’s not simply that there’s a race problem here, a gender problem here, and a class or LBGTQ problem there. Many times that framework erases what happens to people who are subject to all of these things.”).

⁴⁶ Patricia A. Broussard, *Unbowed, Unbroken, and Unsung: The Unrecognized Contribution of African American Women in Social Movements, Politics, and the Maintenance of Democracy*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 631, 672–76 (2019) (“Black women have had to navigate around every negative stereotype which has been created about race and gender. Every negative stereotype that has been constructed around these two immutable traits have been assigned to [B]lack women from slavery and beyond.”).

⁴⁷ *Id.* at 673.

⁴⁸ *Id.* at 675.

⁴⁹ *Id.* at 676.

harming Black women's bodies, mental health, and success, and society as a whole.⁵⁰

Others scholars, like Marilyn Yarbrough and Crystal Bennet, have investigated the different and negative tropes society has hurled at Black women.⁵¹ And Trina Jones and Kimberly Jade Norwood explain the myth of the "angry Black woman," namely that "she is out of control, disagreeable, overly aggressive, physically threatening, loud (even when she speaks softly), and to be feared. She will not stay in her 'place.' She is not human."⁵² Society chooses to interpret Black

⁵⁰ *Id.* ("The [B]lack female body and intellect have been used as weapons against [B]lack women and have been used to portray them as less intelligent, less truthful, less moral, and less valuable than white men and women."). Upon focusing my scholarship on the experiences of Black women within the U.S. criminal legal system, invariably, I have gotten a variation of the question, "Since the United States incarcerates and convicts many more Black men than Black women, why do you focus on Black women?" The question presupposes that Black women are not worthy of discussion and the number of Black women in the system are insufficient to offer valuable analysis. These narratives and beliefs about Black women's insignificance are not new. Laroche, *supra* note 28, at 2444–47 (describing the history of Black women scholars and others who have stressed the discrimination Black women have faced because of their race and gender). Much of the attention on the criminal legal system has focused on Black men, to the detriment of Black women's experiences. *See, e.g.*, MICHELLE ALEXANDER, *THE NEW JIM CROW* (10th Anniversary ed. 2020); *see also* Talitha L. LeFlouria, *Criminal Justice Reform Won't Work Until It Focuses on Black Women*, WASH. POST (Feb. 12, 2021), <https://www.washingtonpost.com/outlook/2021/02/12/criminal-justice-reform-wont-work-until-it-focuses-black-women>. In fact, in 2016, Michelle Alexander acknowledged her complicity in the marginalization of Black women and girls in the national discourse around the criminal legal system because she focused expressly on Black men in her influential 2010 book on mass incarceration, *The New Jim Crow*. Kristi DiLallo, *Understanding the Needs of Women in the Justice System*, VERA INST. OF JUST. (Dec. 9, 2016), <https://www.vera.org/blog/understanding-the-needs-of-women-in-the-justice-system>; Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 COLUM. J. RACE & L. 517, 524 (2022). In her 2020 edition of *The New Jim Crow*, Alexander highlighted the value of also discussing Black women's experiences within the criminal legal system. ALEXANDER, *supra* note 50, at xix–xxii. Other scholars and I have analyzed the intersectional experiences of Black women in this Article, *see infra* Part I.A, and in prior publications, *see, e.g.* Laroche, *supra* note 28, at 2431; *see also* SUSAN BURTON & CARI LYNN, *BECOMING MS. BURTON: FROM PRISON TO RECOVERY TO LEADING THE FIGHT FOR INCARCERATED WOMEN* (2017). By emphasizing the impact criminal laws and policies have on Black women, I reject the premise that Black women's lives do not warrant examination by scholars and society more broadly.

⁵¹ Marilyn Yarbrough & Crystal Bennet, *Cassandra and the "Sistahs": The Peculiar Treatment of African Women in the Myth of Women as Liars*, 3 J. GENDER RACE & JUST. 625 (2000).

⁵² Jones & Norwood, *supra* note 17, at 2049.

women's frustration with the countless acts that denigrate their worth and work as overblown anger and unwarranted hostility toward others.⁵³

Black women face physical and emotional harms while enduring these tropes, oppression, and constant attacks.⁵⁴ Further, because of society's impulse to police Black women, they face higher rates of regulation and policing⁵⁵ than other women.⁵⁶ One of the many consequences of this mass criminalization for Black women is a prohibition on voting.⁵⁷

I focus on Black women's voter exclusion based on criminal convictions because Black women face the combined effects of racism and sexism that causes a harsh form of subordination. Black women are disproportionately arrested and convicted in the criminal legal system, which contributes to their voter exclusion and furthers a system of subordination and marginalization that has existed since slavery in the United States.⁵⁸ Voting is an attempt to force elected officials to note

⁵³ *Id.* at 2021–22.

⁵⁴ See Meghan Tipre & Tiffany L. Carson, *A Qualitative Assessment of Gender- and Race-Related Stress Among Black Women*, 3 WOMENS HEALTH REP (New Rochelle) 222, 222–27 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8896166> (“Black women report higher levels of psychological stress than White women and carry a disproportionate burden of chronic conditions associated with psychological stress, including obesity.”). See generally ARLINE T. GERONIMUS, *WEATHERING: THE EXTRAORDINARY STRESS OF ORDINARY LIFE IN AN UNJUST SOCIETY* (2023) (examining the effect stress has on the physical health of Black people and other minority groups).

⁵⁵ In the summer of 2024, a white male police officer murdered Sonya Massey, an unarmed Black woman, in her home. Candice Norwood, *Police Killing of Sonya Massey is Striking Example of Another “Senseless Loss” in the Black Community*, THE 19TH (July 23, 2024, at 17:30 ET), <https://19thnews.org/2024/07/sonya-massey-body-camera-footage-outrage-police-violence>; Christina Carrega, *Sonya Massey’s Family Wins Historic \$10M Settlement While Officer Awaits Trial*, CAPITAL B (Feb. 12, 2025), <https://capitalbnews.org/sonya-massey-illinois>; Press Release, Nat’l Black Women’s Just. Inst., *Statement on Police Shooting and Killing of Sonya Massey* (July 29, 2024), <https://www.nbwji.org/post/statement-on-policing-shooting-and-killing-sonya-massey>.

⁵⁶ For example, “[w]hile the number of White women in the daily jail population rose 3 percent from the end of November 2021 to November 2022, the number of Black women grew nearly 15 percent.” Candice Norwood, *More Women are Being Detained as Jail Populations Near Pre-COVID Levels*, THE 19TH (Jan. 3, 2023), <https://19thnews.org/2023/01/jail-population-pandemic-incarceration-rates-women>. Research indicates women who are detained have higher rates of mental health conditions and other health issues than men. *Id.*

⁵⁷ Laroche, *supra* note 28, at 2431.

⁵⁸ See *id.*, at 2444–47, 2454–57; WOMEN’S JUSTICE: A PRELIMINARY ASSESSMENT OF WOMEN IN THE CRIMINAL JUSTICE SYSTEM, COUNCIL ON CRIM. JUST.: WOMEN’S JUST.

one's interests, and Black women's ban from the ballot box as a result of their criminal convictions, I argue, falls within the vast shadow of the afterlife of slavery.⁵⁹

As Hartman explained:

If slavery persists as an issue in the political life of [B]lack America, it is not because of an antiquarian obsession with bygone days or the burden of a too-long memory, but because [B]lack lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery—skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment.⁶⁰

The afterlife of slavery affects so many aspects of life. Scholars have applied Hartman's afterlife of slavery to explain the racist policies and systems that continue to harm Black communities today, but her concept has received less attention in legal scholarship.⁶¹

COMM'N (July 2024), <https://counciloncj.org/womens-justice-a-preliminary-assessment-of-women-in-the-criminal-justice-system> (describing unique challenges women face in the criminal legal system).

⁵⁹ After the Civil War, the United States passed constitutional amendments that were supposed to emancipate all Black people. The Thirteenth Amendment abolished slavery throughout the United States, except as punishment for a criminal offense. U.S. CONST. amend. XIII. The Fourteenth Amendment granted Black people citizenship and equal protection under the law. U.S. CONST. amend. XIV. And the Fifteenth Amendment outlawed denying people the right to vote based on race. U.S. CONST. amend. XV. That alleged freedom from slavery, however, did not provide true liberation. Other forms of slavery and the "badges and incidents" of slavery took shape. The Civil Rights Cases, 109 U.S. 3, 8–9, 20 (1883) (holding Congress has "power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States" under Section 2 of the Thirteenth Amendment). These laws, policies, and norms continued the history of oppression of and terror for Black people in the United States, including the prevalent use of convicting Black people for crimes and subsequently disenfranchising them because of those convictions.

⁶⁰ SAIDIYA HARTMAN, *LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE 6* (2021).

⁶¹ Scholars in other fields have built on Hartman's concept in profound ways. For example, writer and English literature and Black studies professor Christina Sharpe describes how Black communities in the "wake" of the afterlife of slavery work to resist its confines. CHRISTINA SHARPE, *IN THE WAKE: ON BLACKNESS AND BEING* 13–15 (2016) [<https://doi.org/10.1215/9780822373452>]; see also REUBEN JONATHAN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF MASS INCARCERATION* (2021) (using Hartman's work to conceptualize mass incarceration through a sociological and criminological approach); Reuben Jonathan Miller, *Writing From the Flesh: A Response to My Interlocutors*, 25 PUNISHMENT & SOC'Y 805, 808 (2023) [<https://doi.org/10.1177/14624745231175784>] ("Hartman's work gives me a way to conceptualize mass incarceration's afterlife—its lingering effects, the ways that it filters

Legal scholars Carliss Chatman and Marissa Jackson Sow,⁶² and civil rights attorney Chinyere Ezie examine the disregard of Black women's political and electoral power in their respective scholarship.⁶³ In a prior article, I analyzed the experiences of Black women excluded from voting because of their criminal convictions to reveal how the United States has blocked Black women's voting rights throughout its history and how people, including white women and Black men, have ignored, excluded, and diminished Black women's efforts to access the ballot box.⁶⁴

Building on this scholarship, this Article makes intelligible the labor of Black women to fashion for themselves a path towards freedom, albeit while using oppressive legal systems. Understanding this path is a step towards restoring and honoring the enfranchisement of these Black women and the past generations of Black women who had to work toward freedom.⁶⁵ And by centering Black women and focusing advocacy efforts on their experiences, the solutions we reach are more likely to be equitable, effective, and liberating for everyone.

B. *Slavery's Gendered Violence*

Many people used the power of slavery against Black women. Enslavers controlled Black women's lives, bodies, and social identities. Hartman defined the power of slavery to include the "extreme domination, disciplinary power, biopower, and the sovereign right to make die."⁶⁶ Black women during slavery endured abuse and violence through gendered and racialized targeting.⁶⁷ In extreme cases, Black women who were enslaved sometimes killed their enslavers as a form

into everyday interactions, how it shapes [B]lack sociality and American social relations more broadly.").

⁶² Carliss Chatman & Marisa Jackson Sow, *The Disregarded Canary: On the Plight of Black Women Voters*, NW. U. L. REV.: NULR OF NOTE (Oct. 29, 2020), <https://blog.northwesternlaw.review/?p=1826>.

⁶³ Chinyere Ezie, *Not Your Mule? Disrupting the Political Powerlessness of Black Women Voters*, 92 U. COLO. L. REV. 659 (2021).

⁶⁴ Carla Laroche, *supra* note 28, at 2444 (2022) ("The racial and gender identity of Black women in the United States has meant that when Black men and white women gained, Black women were left behind. Society has yet to deem Black women worthy of consideration and justice.").

⁶⁵ MARTHA S. JONES, VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL 8–11 (2020).

⁶⁶ *Id.* at 6.

⁶⁷ *Id.* at 11.

of resistance.⁶⁸ In *Brooding Over Bloody Revenge*, Nikki M. Taylor scoured historical and legal records for information about Black women who planned out and executed the deaths of their enslavers.⁶⁹ For these women, the killings were a source of accountability—that is, actions “in response to beatings, abusive language, sexual assault, heavy workloads, threats of being sold away from loved ones, and being denied food, time off, and holidays.”⁷⁰ As Taylor explains, the cumulative cruelty of their enslavers led to these Black women’s “bloody indictment” of the abuse⁷¹ and an expression of their freedom.

The enslavement of Black people was a critical feature of the United States’ history. It is embedded within the original Constitution and is still authorized within the Thirteenth Amendment.⁷² The legislative branch passed, the executive branch enforced, and the judicial branch affirmed countless white supremacist laws and policies that furthered the institution of slavery.⁷³ Black people endured physical and psychological torture and financial abuse in the name of slavery and racism.⁷⁴

⁶⁸ Black people joined in slave revolts during slavery. In 1811, one of the largest slave revolts began in Louisiana with over 500 Black people joining the revolt. Maris Fessenden, *How a Nearly Successful Slave Revolt Was Intentionally Lost to History*, SMITHSONIAN (Jan. 8, 2016), <https://www.smithsonianmag.com/smart-news/its-anniversary-1811-louisiana-slave-revolt-180957760>. They marched to New Orleans, with the goal of developing a free state for Black people along the Mississippi River. *Id.* Because the army of enslaved people “posed an existential threat to white control over the city of New Orleans,” the federal troops and private militia owned by enslavers quelched the rebellion violently. *Id.* The government placed the heads of Black people involved in the revolt on poles that ran across sixty miles along the Mississippi Riverbanks “to frighten and intimidate” other people who were enslaved. *Id.*

⁶⁹ NIKKI M. TAYLOR, *BROODING OVER BLOODY REVENGE: ENSLAVED WOMEN’S LETHAL RESISTANCE* (2023) [<https://doi.org/10.1017/9781009276818>]. Taylor exposed unknown slave resistance by Black women and rejected the narrative that “enslaved women rarely chose armed, lethal, or overt forms of resistance.” *Id.* at 3–6 (describing the exclusion of Black women from scholarship on revolts and the increased push back against that narrative).

⁷⁰ *Id.* at 7.

⁷¹ *Id.*

⁷² U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”). States have banned enslaved labor as punishment through their state constitutions.

⁷³ See, e.g., *Dred Scott v. Sanford*, 60 U.S. 393, 404 (1857) (enslaved party) (upholding the right of white people to own Black people as property), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

⁷⁴ See CAMP, *supra* note 15, at 2, 12.

The institution of slavery relegated enslaved people to the status of property and nonvoters, as Thomas Paine expressed, and, therefore, undeserving of any protection that enslavers did not think were necessary. Enslavers would sell a Black person's family member for profit or to pay off a debt because of the denial of Black women's rights as human beings worthy of parenting and families.⁷⁵ For these enslavers, Black women were economic animals rather than mothers.⁷⁶

Generally, the government did not intervene in the regulation and punishment white people imposed on enslaved people. During slavery, Black people experienced inhumane treatment and lasting harms. Proliferating stereotypes of Black women as promiscuous and desiring sex with white men, the law left Black women unprotected from white enslavers who raped them.⁷⁷ White women benefited from the enslavement of Black women in ways that researchers are confirming only recently.⁷⁸ Economists at Ohio State University and historian Stephanie E. Jones-Rogers of the University of California, Berkeley, noted that white women would buy Black women because they "were cheaper but paid dividends later on when they reproduced."⁷⁹ Treating Black women as chattel and reaping the benefits of their labor allowed white women to "taste" freedom and property.⁸⁰

Courts upheld and interpreted laws to reinforce the racist norm that Black people were unworthy of legal protection and political

⁷⁵ JOSIAH HENSON, TRUTH STRANGER THAN FICTION: FATHER HENSON'S STORY OF HIS OWN LIFE 11–13 (1858) [<https://doi.org/10.5479/sil.1064005.39088018649566>].

⁷⁶ Gwendoline M. Alphonso, *Political-Economic Roots of Coercion—Slavery, Neoliberalism, and the Racial Family Policy Logic of Child and Social Welfare*, 11 COLUM. J. RACE & L. 471, 479–86 (2021), <https://doi.org/10.52214/cjrl.v11i3.8742>; HARTMAN, *supra* note 22, at 12 (noting the "nonevent of Emancipation").

⁷⁷ KIMBERLY M. WELCH, BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH 52 (2018) (noting that the image of Black women as savages reinforced the acceptability of enslaving them and that "the rape of a [B]lack woman was deemed impossible"). For further analysis of the myths about Black women, see DEBORAH G. WHITE, AR'N'T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH (1985); JENNIFER L. MORGAN, LABORING WOMEN: REPRODUCTION AND GENDER IN NEW WORLD SLAVERY (2004); KATHLEEN M. BROWN, GOOD WIVES, NASTY WENCHES, AND ANXIOUS PATRIARCHS (2012).

⁷⁸ *New Research Exposes the Role of Women in the Slave Trade*, THE ECONOMIST (June 22, 2024), <https://www.economist.com/united-states/2024/06/18/new-research-exposes-the-role-of-women-in-americas-slave-trade> (stating that white women enslavers ran "slave brothels" and would make women who were enslaved produce products that the enslavers would then keep the proceeds of for themselves).

⁷⁹ *Id.*

⁸⁰ *Id.*

power. In *Dred Scott v. Sanford*, for example, the U.S. Supreme Court held that Black people were not U.S. citizens and could not access the protections and benefits bestowed on white people by the U.S. Constitution.⁸¹ This 1857 decision written by Chief Justice Roger Taney, often considered one of the worst decisions by the U.S. Supreme Court, affirmed the notion that only white people deserved legal consideration.⁸²

A lesser known decision, also written by Taney two years after *Dred Scott*, gave federal and state governments the power to reinforce slavery's reign against Black people.⁸³ In *United States v. Amy*, the federal government prosecuted and convicted Amy, a Black woman who was enslaved, for stealing federal mail.⁸⁴ Amy's enslaver hired an attorney to appeal the criminal conviction, arguing that sentencing her to imprisonment was an unconstitutional taking under the Fifth Amendment.⁸⁵ If Black people were property, the federal government must pay Amy's enslaver before incarcerating her, the attorney claimed.⁸⁶

Taney, while riding the circuit, heard the arguments and did not agree with the enslaver's reasoning. Instead, in reviewing Amy's matter, Taney held that Black people had two existences simultaneously, property and human, finding that Black people who were enslaved were profitable chattel for white people and yet people

⁸¹ *Dred Scott v. Sanford*, 60 U.S. 393, 404 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

⁸² *The Human Factor of History: Dred Scott and Roger B. Taney*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/human-factor-history-dred-scott-and-roger-b-taney>, (last visited Sept. 10, 2025); Martin Magnusson, "No Rights Which the White Man was Bound to Respect": The *Dred Scott* Decision, AM. CONST. SOC'Y (Mar. 19, 2007), <https://www.acslaw.org/expertforum/no-rights-which-the-white-man-was-bound-to-respect>; HeinOnline Blogger, *The Infamy of the Dred Scott Decision*, HEINONLINE BLOG (Oct. 18, 2023), <https://home.heinonline.org/blog/2023/10/the-infamy-of-the-dred-scott-decision>.

⁸³ *United States v. Amy*, 24 F. Cas. 792 (C.C.D. Va. 1859) (No. 14,445) (enslaved party).

⁸⁴ The decision notes that Amy was "the property of Samuel W. Hairston, of Patrick county [sic], Virginia." *Id.* at 793.

⁸⁵ *Id.* at 795. The Takings Clause of the Fifth Amendment of the U.S. Constitution states, "[N]or shall private property be taken for public use, without just compensation" and requires the government to pay a person should it take possession of the person's property. U.S. CONST. amend. V.

⁸⁶ *Amy*, 24 F. Cas. at 809.

for criminal punishment.⁸⁷ His holding reflected the devaluing of Black women and all Black people who were enslaved. As Hartman noted, “The slave was recognized as a reasoning subject, who possessed intent and rationality, solely in the context of criminal liability; ironically the slave’s will was acknowledged only as it was prohibited or punished.”⁸⁸ Liberty and dignity within the law did not apply in the face of racism and sexism.

In *State v. Mann*,⁸⁹ a 1829 North Carolina Supreme Court case that some scholars view as “probably the most notorious judicial opinion on the relationship between enslaver and enslaved people ever rendered by a state court,”⁹⁰ the court’s holding was gender neutral but had additional implications for Black women who were enslaved. The accused, John Mann, was tried and convicted of battery after he shot and wounded Lydia, an enslaved Black woman Mann had leased from her enslaver.⁹¹ The North Carolina Supreme Court reversed Mann’s conviction and held that the government could not punish enslavers for punishing enslaved people. The court explained, “The power of the master must be absolute, to render the submission of the slave perfect.”⁹² This decision affirmed enslavers’ violence against and domination of Black people. The *Mann* court’s holding not only recognized enslavers’ degradation of Black people, but it also accepted a more gendered consequence: the rape and sexual assault of Black women without criminal repercussions.⁹³ The law refused to put limits

⁸⁷ *Id.* at 810; A. Leon Higginbotham, Jr. & Anne F. Jacobs, *The “Law Only as an Enemy”: The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia*, 70 N.C. L. REV. 969, 971–72 (1992).

⁸⁸ Saidiya Hartman, *Seduction and the Ruses of Power*, 19 CALLALOO 537, 540 (1996) [<https://doi.org/10.1353/cal.1996.0050>].

⁸⁹ *State v. Mann*, 13 N.C. (2 Dev.) 263 (1829).

⁹⁰ Martin H. Brinkley, *State v. John Mann*, NCPEDIA (2006), <https://www.ncpedia.org/state-v-john-mann>; see also Sally Greene, *State v. Mann: Lydia’s Journey*, AF. AM. INTELLECTUAL HIST. SOC’Y (2022), <https://www.aaihs.org/state-v-mann-lydias-journey> (“Legal historians consider *State v. Mann* . . . to be the law’s starkest, most cruel justification of the violence at the heart of the slave labor system.”).

⁹¹ *Mann*, 13 N.C. (2 Dev.) at 264–65.

⁹² *Id.* at 266.

⁹³ DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 31 (1997) (“In short, for most of American history, the crime of rape of a Black woman did not exist.”); Jeffrey J. Pokorak, *Rape as a Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 NEV. L.J. 1, 6–7 (2006) (“[I]n the very few places where the law did not bar such rape prosecutions either explicitly or procedurally, prosecutorial discretion to decline prosecution completed the decriminalization of raping a Black woman.”).

on the way enslavers abused and traumatized Black women in the name of slavery's supremacy. As such, laws, legal cases, and socially accepted policies authorized enslavers to target, torture, and dehumanize Black women during slavery, and Black women had no recourse.

C. *Voter Exclusion in the Afterlife*

Hartman's afterlife of slavery concept extends to the criminal legal system's intersectional impact on Black women and voter exclusion. This subsection examines how certain policymakers have tried to use the criminal legal system and exclusionary practices in voting to continue subjugating Black women within slavery's shadow through alternative forms.

As Hartman explained, after "slavery's formal demise, the old relations of servitude and subordination were recreated in a new guise."⁹⁴ After the Civil War and Reconstruction ended, members of the former Confederate states implemented laws, known as the Black Codes, that used the incarceration of Black children and adults to "lease" them out to white people.⁹⁵ Their former enslavers received priority for leasing of these now ostensibly free Black people.⁹⁶ They were unabashed about their goal of restricting Black people's opportunities, movement, and autonomy. Those restrictions included furthering mass incarceration and the ban on voting for people with criminal convictions.

As Michelle Alexander explains in her pivotal book, *The New Jim Crow*, the use of the criminal legal system continues to serve those oppressive purposes today.⁹⁷ Since the 1980s, the government has disproportionately arrested millions of Black people, including Black women; held them in jails and prisons; placed them under surveillance through alternatives to incarceration, probation, and parole; and

⁹⁴ HARTMAN, *supra* note 22, at 9 (describing how "[a] wave of revanchism and counterrevolution engulfed the nation" to ensure Black people acted in line with an inferior status).

⁹⁵ Hartman expressed these white supremacist efforts as "[t]he 'gift of freedom' g[iving] birth to the landless tenant and the indebted worker." *Id.*

⁹⁶ Garrett Epps, *The 'Slave Power' Behind Florida's Felon Disenfranchisement*, ATLANTIC (Feb. 4, 2018), <https://www.theatlantic.com/politics/archive/2018/02/the-slave-power-behind-floridas-felon-disenfranchisement/552269>.

⁹⁷ See ALEXANDER, *supra* note 50.

burdened them with the lasting challenges of a conviction.⁹⁸ These forms of regulation and carcerality reflect “the ways in which white supremacy shapes and organizes society ‘through policies and logic of control, surveillance, criminalization, and un-freedom.’”⁹⁹

In the criminal legal system, in particular, Black women’s rate of incarceration is disproportionately higher than white and Latine women.¹⁰⁰ This higher exposure to the criminal legal system has countless other effects, including voter exclusion.¹⁰¹

⁹⁸ See NELLIS, *supra* note 44, at 1, 6; Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2025*, PRISON POL’Y INITIATIVE (Mar. 11, 2025), <https://www.prisonpolicy.org/reports/pie2025.html>; Nazgol Ghandnoosh, *One in Five: Ending Racial Inequity in Incarceration*, SENT’G PROJECT (2023), <https://www.sentencingproject.org/reports/one-in-five-ending-racial-inequity-in-incarceration>; JOSHUA M. PRICE, *PRISON AND SOCIAL DEATH* 5, 11-12 (2015).

⁹⁹ Angela Olivia Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being*, 11 COLUM. J. RACE & L. 639, 662 (2021) (quoting Gabrielle French et al., *What Is the Carceral State?*, UNIV. OF MICH. CARCERAL STATE PROJECT (May 2020), <https://storymaps.arcgis.com/stories/7ab5f5c3fbca46c38f0b2496bcaa5ab0>). In *Strict Scrutiny and the Black Body*, Devon Carbado remarks that the disproportionate incarceration of Black people signifies society’s confirmation that prisons are where “we belong.” Devon Carbado, *Strict Scrutiny and the Black Body* 69 UCLA L. REV. 2, 20 (2022). Nell Bernstein has explained, “The dissolution of families, the harm to children—and the resultant perpetuation of the cycle of crime and incarceration from one generation to the next—may be the most profound and damaging effect of our current penal structure.” NELL BERNSTEIN, *ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED* 4 (2005).

¹⁰⁰ KRISTEN M. BUDD, SENT’G PROJECT, *INCARCERATED WOMEN AND GIRLS* 2 (2023), <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls>. Notably, the women’s incarceration rate has increased more than the men’s rate; see also NELLIS, *supra* note 44, at 9. Although, the rate of Black women’s incarceration has been decreasing since 2000, it is still higher than white and Latine women. BUDD, *supra* note 100, at 2. And, while this Article discusses the experiences and resistance of Black women, the overrepresentation of Native and Indigenous women in prisons and the disproportionate rate of incarceration of Latine women are part of the disparities in intersectional analysis as well. See Aleks Kajstura & Wendy Sawyer, *Women’s Mass Incarceration: The Whole Pie 2024*, PRISON POL’Y INITIATIVE (2024), <https://www.prisonpolicy.org/reports/pie2024women.html>; BUDD, *supra* note 100. Further, researchers have found that “Black and lesbian or bisexual women and girls are disproportionately subject to incarceration.” Kajstura & Sawyer, *supra* note 100.

¹⁰¹ The Fifteenth Amendment, U.S. CONST. amend. XV, and Nineteenth Amendment, U.S. CONST. amend. XIX, do not protect all Black women’s right to vote, even though the two Amendments were supposed to limit restrictions on the right to vote based on race and gender. Laroche, *supra* note 28, at 2453.

For Black women and the millions of others who cannot vote, voter exclusion neither starts nor ends if released from a carceral facility. In the afterlife of slavery, exclusion from the ballot box imposes restrictions that bind them. Critiques of people voting, whether while incarcerated or free, contain the notion that the system considers Black women with convictions less important than other individuals with no criminal records.¹⁰² The state's regulation of Black women while denying them the tools of direct political engagement repudiates Black women's autonomy.

Today, over four million people across the United States cannot vote because of their criminal records.¹⁰³ States have the authority to determine who can and cannot register to vote under the United States Constitution. All states but Maine and Vermont, plus the District of Columbia and Puerto Rico, have imposed voting restrictions on people with criminal convictions.¹⁰⁴ Of the four million people banned from voting, Black people are overly represented; the rate of disenfranchisement is more than three times higher for Black people than non-Black people.¹⁰⁵ Further, roughly 764,000 of the four million people banned from voting are women.¹⁰⁶ Unfortunately, sources report the disenfranchisement data by race and gender but do not offer an intersectional review;¹⁰⁷ as a result, the precise number of Black women ineligible to vote is unavailable.

Supporting voter exclusion based on criminal convictions means approving the use of federal and state constitutions and laws to relegate people with convictions to a subordinate status and to

¹⁰² Laroche, *supra* note 28, at 2476–78.

¹⁰³ UGGEN ET AL., *supra* note 41, at 1–2, 9 fig. 5.

¹⁰⁴ *Id.* at 3. Various cumbersome requirements and restoration processes have led to disparate disenfranchisement rates among states. For example, researchers found that “Arizona, Florida, Kentucky, South Dakota, and Tennessee” ban more than one in ten of their Black residents, which is much higher than other states, *id.* at 3, 10 fig. 7.

¹⁰⁵ *Id.* at 13.

¹⁰⁶ *Id.* at 11. Women accounted for just under 20 percent of people who are ineligible to vote because of criminal convictions, and they made up 12.5 percent of the total number of people sentenced in federal court in 2024. U.S. SENT’G COMM’N, QUICK FACTS: FEDERALLY SENTENCED WOMEN (2024), <https://www.ussc.gov/research/quick-facts/federally-sentenced-women>.

¹⁰⁷ *Cf.* Crenshaw, *supra* note 45, at 140 (“With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical access.”).

discriminate against Black people, like in slavery.¹⁰⁸ Kemba Smith, a justice advocate who was once incarcerated, stated, “It’s time for our nation to recognize that we actually have human beings that are behind bars who make mistakes.”¹⁰⁹ Proponents of voter exclusion based on criminal convictions assume people with convictions are not worthy of voting. That assumption then imposes other restrictions, including never becoming eligible to vote, waiting before being able to vote, or proving their worthiness by navigating the difficult disenfranchisement maze.

Voter exclusion embodies a stigmatized status reflected in the racism within decisions like *Dred Scott*.¹¹⁰ No matter how one views voter exclusion, inevitably, it prevents some people from exercising political power through the ballot box. In *Black Women and Voter Suppression*,¹¹¹ I applied Monica C. Bell’s legal estrangement theory to the context of voter exclusion based on criminal convictions.¹¹² According to Bell’s theory, the policing and regulation of Black people has led to their detachment from legal systems.¹¹³ Further, their distrust includes a belief that the laws and enforcers of those laws do not seek to support them.¹¹⁴ In the voter exclusion context, the different opinions that support excluding people with convictions from the ballot box furthers

¹⁰⁸ See generally Serafin, *supra* note 30 (describing the use of slavery to validate subordination of certain groups of people).

¹⁰⁹ *Public Service Announcement: 50 Years and a Wake Up*, SENT’G PROJECT (Oct. 10, 2023), <https://www.sentencingproject.org/video/public-service-announcement-50-years-and-a-wake-up>.

¹¹⁰ Joshua M. Feinzig analyzed the use of voter exclusion based on convictions to exclude people with legal financial obligations from the ballot box. Joshua M. Feinzig, *Felon Re-Enfranchisement the Problem of “Lost” Rights*, 131 YALE L.J.F. 689, 690–92 (2022). He critiqued the assumption that this type of voter exclusion resulted in people losing their political rights. Instead, Feinzig argued that people retain their voting rights and interests, but that the laws and norms suppress them. The states’ desires to punish people cause the subordination of people’s rights and interests in voting, rather than the complete extinguishment of those rights and interests. *Id.* at 700 (“For instance, a convicted individual’s physical liberty, speech, and privacy interests are deprived in the course of incarceration subject to a watered-down standard of review, but remain cognizable sources of constitutional protection in certain circumstances. Political rights should be no different.”).

¹¹¹ Laroche, *supra* note 28, at 2431.

¹¹² Laroche, *supra* note 28, at 2431; see also Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017).

¹¹³ Bell, *supra* note 112, at 2066.

¹¹⁴ *Id.*

a similar detachment and distrust. Legal estrangement comes from the continuous explicit demotion of people's voting rights and interests.

Overcoming voter exclusion requires people with convictions to prove their worth and humanity to policymakers, judges, and society more generally.¹¹⁵ Much of the rhetoric surrounding voter exclusion targets the need to exclude people from the ballot box because their criminal convictions purportedly justify society's distrust and further disregard. Supporters of voter exclusion assert that people who committed a crime are undeserving of the vote and of influencing laws and policies.¹¹⁶ According to their argument, people with convictions have shown an unwillingness to respect the social contract and legal expectations; therefore, society cannot trust these individuals to vote effectively. This narrative reinforces that whether a person is incarcerated or released from confinement, they do not experience true emancipation; the afterlife of slavery remains.

Voters and political leaders tell people with convictions that they gave up the right to have society consider their interests because of their prior records; as such, society has chosen to nullify their political power.¹¹⁷ Take, for example, the recent removal of the right to vote for people incarcerated in Massachusetts prisons.¹¹⁸ In the 1970s and 1980s, the Massachusetts Supreme Court confirmed people's right to vote while in prison as absentees in the jurisdiction of their prior residence before prison.¹¹⁹ Activists made efforts to register people who

¹¹⁵ See generally ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY, WITH A NEW PREFACE* (Harvard Univ. Press, 2018) (discussing the stigma and the goal of devaluing people in bondage as part of slavery's power). In the voter exclusion based on criminal convictions context, that same degradation and exclusion exists. Laroche, *supra* note 28; Toni Morrison, *A Humanist View* (May 30, 1975), https://www.mackenzian.com/wp-content/uploads/2014/07/Transcript_PortlandState_TMorrison.pdf (“[T]he very serious function of racism . . . is distraction. It keeps you from doing your work. It keeps you explaining[,] over and over again, your reason for being.” (emphasis omitted)).

¹¹⁶ See Laroche, *supra* note 28, at 2483–87 (reviewing research that explains the reasons people support voter exclusion based on criminal convictions, including racist beliefs).

¹¹⁷ Feinzig, *supra* note 110, at 695, 714.

¹¹⁸ Edgar B. Herwick III, *How Massachusetts Prisoners (Recently) Lost the Right to Vote*, GBH (May 29, 2019), <https://www.wgbh.org/news/local/2019-05-29/how-massachusetts-prisoners-recently-lost-the-right-to-vote>.

¹¹⁹ *Id.*; *Timeline of Massachusetts Incarcerated Voting Rights*, BALLOTS OVER BARS, EMANCIPATION INITIATIVE AGAINST LIFE WITHOUT PAROLE (2018), <https://static1.squarespace.com/static/5ed66b159f32a9497348a1fa/t/66082fa7dc04>

were incarcerated and offer voter educational opportunities.¹²⁰ Politicians visited prisons to get the thoughts and support of people within their walls.¹²¹ Yet soon after people who were incarcerated planned to create a political action committee to address criminal legal system issues, the Massachusetts governor announced the goal of getting a state constitutional amendment on the ballot to outlaw voting for people in prison.¹²² In 2000, that constitutional ban passed by over 60 percent.¹²³ The idea that people in prison tried to organize and wield their political power publicly became “a bridge too far” for voters, which led to banning people in prison from voting altogether.¹²⁴

The unifying principle of voter exclusion laws based on convictions is that states may ban people from exercising their right to vote. Unlike historical slavery, the federal government has not passed laws like the Fugitive Slave Act to support voter exclusion. In fact, the Voting Rights Act of 1965 sought to address discriminatory voting practices across the United States.¹²⁵ Like slavery, however, the law regulates and accepts the harms or violence of slavery's afterlife. Voter exclusion based on criminal convictions is an example of that given the connection between race, criminal law, and voter disenfranchisement. For example, in 1974, the U.S. Supreme Court found that these voter exclusion schemes do not violate the U.S. Constitution under the Equal Protection Clause of the Fourteenth Amendment through its decision in *Richardson v. Ramirez*.¹²⁶ Since then, the Court has upheld,

7f4d0626ba51/1711812520423/_EI+Incarcerated+Voters+Rights+MA%2C+Timeline+2019.pdf.

¹²⁰ Herwick, *supra* note 118.

¹²¹ Sam Drysdale, *Criminal Justice Advocates Pursue Voting Rights for Inmates with Felony Convictions in Mass.*, WBUR (Apr. 7, 2023), <https://www.wbur.org/news/2023/04/07/massachusetts-voting-rights-prison-inmates>.

¹²² Herwick, *supra* note 118.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Christopher B. Seaman, *An Uncertain Future for Section 5 of the Voting Rights Act: The Need for a Revised Bailout System*, 30 ST. LOUIS U. PUB. L. REV. 9, 12–15 (2010) (examining the historical reasons and need for the Voting Rights Act of 1965).

¹²⁶ *Richardson v. Ramirez*, 418 U.S. 24, 54, 56 (1974) (holding that Section 2 of the Fourteenth Amendment allowed states to disenfranchise people with criminal convictions).

consistently, these voter exclusion schemes.¹²⁷ And the Court has weakened the Voting Rights Act through recent court decisions,¹²⁸ making it harder to challenge oppressive voting laws and policies the act was meant to eliminate.¹²⁹

¹²⁷ The U.S. Supreme Court has declared only one state's scheme unconstitutional. In 1985, in *Hunter v. Underwood*, the Supreme Court held that Alabama's disenfranchisement scheme violated the Fourteenth Amendment of the U.S. Constitution. *Hunter v. Underwood*, 471 U.S. 222, 233 (1985). U.S. Courts of Appeal have upheld state laws that apply voter exclusion based on convictions. For example, see *Jones v. Governor of Fla.*, 975 F.3d 1016, 1032 (11th Cir. 2020) (holding voter exclusion scheme in Florida requiring people with felony convictions to pay all fines, fees, and restitution before they can vote violated neither the Fourteenth nor the Nineteenth Amendments), *aff'd*, 15 F.4th 1062 (11th Cir. 2021); *Hopkins v. Watson*, 108 F.4th 371, 375 (5th Cir. 2024) (finding Mississippi's permanent voting ban for people with certain felony convictions did not violate the Eighth Amendment), *cert. denied*, 145 S. Ct. 1138 (2025). See also Franita Tolson, "In Whom is the Right of Suffrage?": *The Reconstruction Acts as Sources of Constitutional Meaning*, 169 U. PA. L. REV. ONLINE 211, 215 n.17 (2021) (explaining the essay's focus on how former confederate states have violated the limitations that the Fourteenth Amendment placed on banning voting for crimes that were not felonies at common law under the Reconstruction Acts, which those states had to pass to return to the Union after the Civil War); Paula Monopoli, *Gender, Voting Rights, and the Nineteenth Amendment*, 20 GEO J. L. & PUB. POL'Y 91, 94, 141 (2022) (proposing that impacted voters may make gender-focused claims against voter exclusion through the Nineteenth Amendment).

¹²⁸ Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 778 (2024) (analyzing how the U.S. Supreme Court has "hobbled" the Voting Rights Act); Seaman, *supra* note 125, at 12; Guy-Uriel E. Charles & Luis Fuentes-Rohwer, *The Voting Rights Act in Winter: The Death of a Superstatute*, 100 IOWA L. REV. 1389, 1391 (2015) ("With *Shelby County v. Holder*, 570 U.S. 529, 556–57 (2013)] and its herald, *Northwest Austin Municipal Utility District No. One v. Holder* ("Northwest Austin"), [557 U.S. 193 (2009),] the Court is cautiously dismantling the most important civil rights statute in our nation's history. The strong message of *Shelby County* is that the voting rights era—and maybe much more broadly, the civil rights era—as we have known it, is over."); Travis Crum, *Deregulated Redistricting*, 107 CORNELL L. REV. 359, 441 (2022) (finding that U.S. Supreme Court case *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021), "dealt a harsh blow to voting-rights plaintiffs and made it more difficult to challenge voter-suppression laws" under section 2 of the Voting Rights Act).

¹²⁹ Murray & Shaw, *supra* note 128, at 778 (explaining that recent court decision "rendered meaningful enforcement of the [Voting Rights Act's] prohibition on discriminatory voting laws exceedingly difficult"); Sophia Lin Lakin, *The Voting Rights Act at 60: A Legacy in Jeopardy, a Democracy at Risk*, AM. C.L. UNION (Aug. 6, 2025), <https://www.aclu.org/news/voting-rights/the-voting-rights-act-at-60-a-legacy-in-jeopardy-a-democracy-at-risk> (describing the attempts by state legislatures to restrict voting access and the threat of the Voting Rights Act's destruction); Kareem Crayton, *The Voting Rights Act Explained*, BRENNAN CTR. FOR JUST. (July 17, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-explained> (noting the voter turnout gap between races has increased as states have implemented voter exclusion policies).

The voting restoration eligibility and procedures differ between and within jurisdictions, meaning that individuals face a considerable risk of violating laws banning people with criminal convictions from voting. This voting by geography includes not knowing when one may be eligible to vote in one state and ineligible in another state with a new criminal conviction. Take, for example, advocate Tiffani Shaw's recent experience in Oklahoma.¹³⁰ After completing her sentence, Ms. Shaw contacted the Tulsa County Election Board, the local district attorney's office, the Oklahoma Department of Corrections, and her state representative's office to confirm that she was able to vote.¹³¹ The responses Ms. Shaw received—if the office gave her any information at all—were confusing and/or wrong.¹³² Ms. Shaw admitted a genuine worry that people will not vote, even if eligible, because of the government's poor knowledge of the restoration process.¹³³

In another example, the Tennessee Secretary of State's website provides a list of criminal convictions that would impose a lifetime ban on a person's ability to vote, when a person may be eligible to vote, and what steps they must take to restore their voting rights.¹³⁴ Placement in one of these categories depends not only on people's criminal convictions, but also on the year they were convicted, which process restored their rights, and when those rights were restored.¹³⁵

The increasing number of "election integrity" offices in Florida, Virginia, Texas, and Arizona; the police departments and prosecutors' offices that investigate and prosecute Black people; and the disproportionately lower punishment for white people who violate these laws¹³⁶ mirrors slave catchers and their authority under the

¹³⁰ Tiffani Shaw, *Opinion: Would Voting Send Me Back to Prison? No One in Local Government Can Answer*, THE OKLAHOMAN (Oct. 20, 2024, at 8:01 CT), <https://www.oklahoman.com/story/opinion/columns/2024/10/20/oklahoma-former-prisoner-incarcerated-vote/75717897007>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* Ms. Shaw recommended that Oklahoma offer a voting rights information hotline and ensure that government workers know and share accurate information about people's eligibility. *Id.*

¹³⁴ *Restoration of Voting Rights*, TENN. SEC'Y OF STATE, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights> (last visited July 2, 2025).

¹³⁵ *Id.*; see also Laroche, *supra* note 28, at 2438 n.25 (2022) (explaining the disenfranchisement maze in Tennessee).

¹³⁶ See, e.g., *Woman Who Registered Dog to Vote Avoids Jail*, NBC News (Sept. 6, 2007, at 1:57 ET), <https://www.nbcnews.com/id/wbna20625773> (recounting that a woman

Fugitive Slave Acts to use the legal system to cage human beings. In a Florida case, police arrested Marsha Ervin, a sixty-nine-year-old Black woman, in September 2023, for voting while ineligible. At 3:00 a.m., police executed an arrest warrant on Ms. Ervin because the Florida Office of Election Crimes and Security offered material indicating that Ms. Ervin had voted in the 2020 general election and the 2022 primary election despite being on probation at those times.¹³⁷ A month later, the local prosecutor dropped the charges because evidence from Ms. Ervin's probation officer confirmed that her probation requirement had not specified a ban on voting when she began her probation in 2018.¹³⁸ Only an October 2022 version of the probation document that Ms. Ervin signed reflected her voting ineligibility.¹³⁹ Further, the prosecutor pointed out that Ms. Ervin did believe she was eligible to vote, and she had received a voter registration card from the state.¹⁴⁰

The punishment imposed on people ineligible to vote because of criminal convictions is much harsher than those imposed on individuals who voted twice. For example, while Black women were sentenced to years in prison for voting while ineligible despite not

who registered her dog to vote and was charged with "making a false or misleading statement to a public servant" would get her charged removed once she completed ten hours of community service and satisfied a \$250 fine); Cory Shaffer, *Shaker Heights Attorney, a Trump Supporter, Tells Judge He Voted Twice in Last Two Elections by Accident*, CLEVELAND.COM (July 13, 2023), <https://www.cleveland.com/court-justice/2023/07/shaker-heights-attorney-a-trump-supporter-tells-judge-he-voted-twice-in-last-two-elections-by-accident.html> (reporting that a man, who voted in different states in both the 2020 and 2022 elections, received a sentence of three years and a fine of \$10,000).

¹³⁷ Denise Royal & Dianne Gallagher, *Voter Fraud Charges Dropped Against 69-Year-Old Black Woman*, CNN (Oct. 18, 2023), <https://www.cnn.com/2023/10/18/us/florida-voter-fraud-charges-case/index.html>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ TheGrio Staff, *Activists Fight for Marsha Ervin, 69, After She's Accused of Voter Fraud*, THEGRIO (Oct. 12, 2023), <https://thegrio.com/2023/10/12/activists-fight-for-marsha-ervin-voter-fraud-allegations-florida>. In 2022, only months before the November 2022 election, Florida Governor Ronald DeSantis aimed to sow fear of arrest and punishment in Florida voters. Lawrence Mower, *These Voter Fraud Cases Brought by the Desantis Administration Aren't Dead After All*, MIA. HERALD (July 17, 2024, at 18:24 ET), <https://www.miamiherald.com/news/politics-government/article290156779.html>. The prosecutor dropped the charges against Ms. Ervin a month after the state arrested her, determining there was a "lack of evidence to establish intent." Douglas Soule, *After Voter Fraud Arrest, Florida Woman Has Charges Dropped, Then Registers to Vote*, TALLAHASSEE DEMOCRAT (Nov. 9, 2023, at 9:51 ET), <https://www.tallahassee.com/story/news/politics/2023/11/08/florida-woman-registers-to-vote-after-voter-fraud-charges-dropped/71502022007>.

knowing their convictions banned them from voting,¹⁴¹ several people in Florida—all white people—pleaded guilty or no contest to voting in two different states during the 2020 election and had to complete community service hours, undergo unsupervised probation, and/or attend a civics course.¹⁴²

As different and complicated as these voter exclusion schemes are, state and federal probation offices advise people neither on voter exclusion rules nor on the process to restore their votes. People seeking to vote after a conviction believe these laws are confusing on purpose and advocates note the lack of training within the state agencies responsible for overseeing the restoration process.¹⁴³ Because of these unclear measures and the fear of getting the requirements wrong, some people do not vote at all or even attempt the restoration process.¹⁴⁴ After learning of the harsh treatment that individuals with criminal records endured because they believed and were told, incorrectly, that they were eligible to vote, others refrain from voting and experience de facto disenfranchisement.¹⁴⁵ The desires to vote and to cast a ballot expressing their interests lose to the reign of fear of navigating access to the ballot box and getting the process wrong. In the afterlife of slavery, “the much-lauded exercise of choice was shored up by the threat of punishment and imprisonment.”¹⁴⁶ Ultimately, voter exclusion regimes remove the perspectives of diverse individuals

¹⁴¹ See *infra* Part II.C.

¹⁴² Mike DeForest, ‘Totes Legit’ Tipster Found 282 Possible Voter Fraud Cases in Florida; Few Prosecuted Outside the Villages, CLICK ORLANDO (Sept. 6, 2022), <https://www.clickorlando.com/news/politics/2022/09/06/totes-legit-tipster-alerted-florida-to-282-possible-voter-fraud-cases-few-have-been-prosecuted>. In August 2022, the governor of Florida hailed the arrest and voter fraud charges of people who were convicted of murder or sexual offenses, which barred them from voting, but who voted in elections nonetheless. Hannah Morse, *Three in Palm Beach County Arrested on Election Fraud Charges, Face Up to 5 Years in Prison*, PALM BEACH POST (Aug. 20, 2022, at 07:00 ET), <https://www.palmbeachpost.com/story/news/politics/elections/county/2022/08/20/three-palm-beach-county-residents-arrested-election-fraud-charges-desantis-announces-arrests/7842093001>. Upon further investigation, the individuals reported that the state had provided them with voter registration cards, essentially authorizing their votes. Mower, *supra* note 140.

¹⁴³ See Daniel Nihanian, *Tennessee Puts Voting Rights at the Whims of State Officials*, BOLTS (Aug. 8, 2023), <https://boltsmag.org/tennessee-restricts-rights-restoration>.

¹⁴⁴ Neil L. Sobol, *Defeating De Facto Disenfranchisement of Criminal Defendants*, 75 FLA. L. REV. 287, 317 (2023); Nihanian, *supra* note 143.

¹⁴⁵ WOOD & BLOOM, *supra* note 28, at 8–9; Sobol, *supra* note 144, at 297.

¹⁴⁶ HARTMAN, *supra* note 22, at 9.

from perhaps the most important political conversation. And like the deregulation of violence during enslavement, laws and legal cases do not limit the government's ability to ban people from voting as trauma and violence in the afterlife of slavery.

II. BLACK WOMEN'S RESISTANCE

Even though "[o]ur laws are based on white legal traditions and designed to maintain the existing power structure," as legal scholar Alexis Hoag-Fordjour recognizes, people have used different tactics to resist and eliminate these racist systems.¹⁴⁷ To seek freedom from enslavement, in its broad shadow, is to push back against the norms, policies, and actions that perpetuate the oppressive status quo. Resistance is part of the effort to proclaim and protect legal rights that the shadow of the afterlife of slavery takes away. In the voting context, resistance recognizes people's autonomy and personhood.

Within this Section, I define emancipation from slavery and voter emancipation in slavery's afterlife, which are what Black women sought and seek when performing their acts of resistance. This Section dissects Hartman's forms of everyday resistance during slavery as the foundation to the resistance taxonomy. Then, I evaluate how Black women have resisted the criminalization of their rights and have sought emancipation and voter emancipation in slavery's afterlife through proactive and reactive measures. Black women are not a monolithic group of people, and their work against the denial of their rights recognizes that diversity.¹⁴⁸ Their efforts are reflective of their attempts to assert their freedom throughout history, including through broader justice mechanisms, while enduring harmful consequences in the process.¹⁴⁹

¹⁴⁷ Alexis Hoag-Fordjour, *White is Right: The Racial Construction of Effective Assistance of Counsel*, 98 N.Y.U. L. REV. 770, 847 (2023) (dissecting how the ineffective assistance of counsel standard in the criminal legal system is premised on protecting white supremacy).

¹⁴⁸ TAYLOR, *supra* note 69, at 2 ("Without [these] stories . . . , we are left with an incomplete, softened, or watered-down understanding of Black women's resistance to slavery. We must enrich and deepen the historiography by adding additional layers and complexity to enslaved women's resistance.").

¹⁴⁹ Within their resistance is an act of survival that I do not construe as selfishness. Society seems to expect Black women to endure criminalization and exclusion while also hailing their superwomen determination to attack that status quo. Laroche, *supra* note 28, at 2454–55 (2022) (citing E-mail from Najarian Peters, Assoc. Professor of L., Univ. of Kansas Sch. of L., to Carla Laroche, Assoc. Clinical Professor, Washington & Lee Univ. Sch. of L. (July 5, 2022, at 11:16 ET) (on file with author)).

A. *Defining Emancipation & Everyday Resistance*

During slavery, the ultimate desire was emancipation, and to hold those who caused the harm accountable. An enslaved person's objective was to no longer be under another person's control; they wanted to assert their humanity and autonomy. With the hope of the elimination of white supremacist and capitalistic domination, Black women wanted to be free from the gendered and sexualized violence they endured.¹⁵⁰ The vision of freedom for Black women during slavery included being able to love their families and parent their children without interference from enslavers or the government.

Because "[t]he liberal conception of freedom had been built on the bedrock of slavery," the United States has yet to accomplish the goal of slavery's abolition.¹⁵¹ As such, today in the afterlife of slavery, emancipation continues to be the unachieved target. In the criminal legal system context, advocates seek prison abolition and the elimination of racist policies, laws, and punishments of Black people.¹⁵²

As a form of emancipation, voting offers communities political power.¹⁵³ Voting gives people the ability to express their interests, as well as those of their families and their community. To delineate this form of freedom within the afterlife of slavery, I use the term "voter emancipation." Voter emancipation in this context encompasses genuine access to the ballot box, which includes the elimination of the disenfranchisement maze and voting restoration processes, the fear of prosecution for voting while ineligible, and the denial of the right to vote because of past experiences in the criminal legal system. Voter emancipation allows civic participation without stigma and exclusion.

Voter exclusion schemes based on criminal convictions highlight the importance of voter emancipation for Black women. In the context of Black women with criminal records, the power of the ballot box goes beyond the ability to vote. The voter emancipation of Black women with criminal convictions would change the dynamic of exclusion in the United States by increasing their direct access to politicians, elevating their interests, and enlarging their ability to run for political office themselves.¹⁵⁴ Reviewing election data for presidential elections

¹⁵⁰ TAYLOR, *supra* note 69, at 7.

¹⁵¹ HARTMAN, *supra* note 22, at 10, 12 (labeling the end of the Civil War as "the nonevent of Emancipation").

¹⁵² See Akbar, *supra* note 24; MARIAME KABA, WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 25–26 (2021).

¹⁵³ Laroche, *supra* note 28, at 2444–47.

¹⁵⁴ See *id.*

confirms that Black women's political preferences differ from Black men, white women, and white men.¹⁵⁵ Voter emancipation, as a normative goal, enables Black women to have a greater say by expressing their particular interests, separate from those of people in other demographics.

Voter emancipation and emancipation more generally, are "visions that exceeded the wreckage of our lives, by the avid belief in what might be."¹⁵⁶ Making these visions a reality is what guided and continues to guide Black women's resistance. All forms of their resistance serve to reveal slavery's impact on people, institutions, and systems.¹⁵⁷ From refusing to work to running away to killing their white enslavers, Black women pushed back against their involuntary subordination and enslavement.¹⁵⁸

Through her writings, Hartman "illuminated the countless ways in which the enslaved challenged, refused, defied, and resisted the condition of enslavement and its ordering and negation of life, its extraction and destruction of capacity."¹⁵⁹ For Hartman, a "genealogy of refusal" offered a more accurate analysis of Black people's seizure of freedom.¹⁶⁰ People resisted and continue to resist through the methods and supports they have at their disposal and, by doing so, challenge the oppression and injustice they and their communities face. Black women who were enslaved were no different. Rather than succumb to the white supremacist and sexist norms, Black women rejected such oppression.¹⁶¹

Hartman's resistance focused on the "attempts to slip away from the status of commodity and to affirm existence as not chattel, as not property, as not wench."¹⁶² What Hartman described as quotidian

¹⁵⁵ See Hannah Hartig et al., *Behind Trump's 2024 Victory, a More Racially and Ethnically Diverse Voter Coalition*, PEW RSCH. CTR. (2025), <https://www.pewresearch.org/politics/2025/06/26/voting-patterns-in-the-2024-election> (comparing the voting patterns of people in the 2016, 2020, and 2024 presidential elections by race and gender, among other demographics).

¹⁵⁶ HARTMAN, *supra* note 22, at 13.

¹⁵⁷ Hartman notes that she wrote her first book to explain how she was "living in the world created by slavery" and that "the relation between slavery and the present was open, unfinished." *Id.* at 5.

¹⁵⁸ TAYLOR, *supra* note 69, at 3–4, 7.

¹⁵⁹ HARTMAN, *supra* note 22, at 6.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 7 (noting the refusal to accept the "values that had transformed" Black people into "breeders, incubators, lactating machines, and sentient tools").

¹⁶² *Id.* at 6.

resistance included a range of actions and inactions by Black people.¹⁶³ The acts Hartman considered resistance were not violent but were subtle, routine actions that employed the tools and abilities at their disposal.¹⁶⁴

Though not yet free, the creativity and deliberations “contested the idea that they were less than human, nurtured acts of vengeance, and anticipated divine retribution.”¹⁶⁵ For those who were enslaved, these acts also embodied efforts against slavery and for freedom.¹⁶⁶ The rest of this Section analyzes the resistance Black women employed during slavery and its afterlife through Hartman’s everyday resistance frame.¹⁶⁷ That resistance sought to use the courts and political power to reach emancipation. As the Black women in this Section demonstrate, resistance in the voting rights context today may include deciding to affirmatively protect their rights through the legal system and political process, performing acts to defend themselves against their caging in ways that many people may see as mundane, and working with allies to weaken and change these oppressive systems.

B. *Proactive Resistance*

Proactive resistance reflects efforts by Black women to engage in the “everyday practice” of resistance through the courts and political action on their own volition. They identify means through which

¹⁶³ *Id.* at 7–8.

¹⁶⁴ *Id.* at 7–8 (“An expansive register of minor gestures, ways of sustaining and creating life, caring for one another, undoing slavery by small acts of stealth and destruction, communal dreaming, sacred transport, redress, and faith in a power greater than master and nation made it possible to survive the unbearable while never acceding to it.”); CAMP, *supra* note 15, at 3.

¹⁶⁵ HARTMAN, *supra* note 22, at 7.

¹⁶⁶ *Id.* at 50; see also Sarah Riley Case, *To Protest for Black Life during the Pandemic: Resistance and Freedom in a Settler State*, 38 CANADIAN J.L. & SOC’Y 316, 318–19 (2023) [<https://doi.org/10.1017/cls.2023.24>].

¹⁶⁷ While I describe the proactive and reactive acts by Black women seeking freedom and to vote, I also recognize that there were actions Black women took that were never recorded or preserved. Hartman described the power of the archive and what it misses when it ignores the reality of Black people. HARTMAN, *supra* note 22, at 12. Black women’s experiences are often part of this unrecognized or misinterpreted history. Morgan Jerkins, *Sold Back into Slavery, She Sued for Restitution—and Won*, MEDIUM (Aug. 26, 2019), <https://zora.medium.com/sold-back-into-slavery-she-sued-for-restitution-and-won-ba5a21c8c53a> (quoting historian W. Caleb McDaniel’s statement, “Unfortunately, sources about Black women’s lives in the [nineteenth] century face an uphill battle for survival and archives. In many cases, it’s difficult to reconstruct what happened.”).

oppression is operationalized, and thus slavery reimposed, and they seek to address them. These women work to address injustice and toward emancipation in strategic and purposeful ways. A proactive resistor's work is not accidental; it is intentional. They choose to assert their right to be heard for their just causes. Their acts of resistance may include serving as a plaintiff in a lawsuit, leading community building and collective action, and running for political office with the goal of alleviating harm. And within the proactive class is the highest form of legal resistance: those seeking to reshape the law through political work. Their efforts consist of not only using the law to protect their rights but also defining those laws and rights through politics and elections. In this subsection, I will describe two proactive resisters—Elizabeth Freeman and Pamela Moses—to provide further context for this type of resistance.

Elizabeth Freeman¹⁶⁸ was the first enslaved Black woman to obtain her freedom under the Massachusetts's constitution through a freedom suit, *Brom and Bett v. J. Ashley, Esq.*¹⁶⁹ Ms. Freeman¹⁷⁰ spent many years enslaved in the home of John Ashley of Sheffield.¹⁷¹ John Ashley was a colonel, local judge, and well-known person in the state,¹⁷²

¹⁶⁸ As with many of the Black women who resisted and did not have direct access to publishers, other individuals documented Ms. Freeman's purported life and beliefs. *Who is Elizabeth Freeman?*, DIGICATION, <https://oxford-emory.digication.com/elizabeth-freeman/home> (last visited July 13, 2025) ("Because Freeman never learned how to read or write, her life story was told through secondhand narrative which can make it difficult to know what she was thinking and what motivated her to make the decisions she did.").

¹⁶⁹ *Brom & Bett vs. J. Ashley Esq. (1781)*, EDUCATING FOR AM. DEMOCRACY (2023), <https://www.educatingforamericandemocracy.org/primary-source/brom-bett-vs-j-ashley-esq-1781> (last visited July 24, 2025); Alexandra "Mac" Taylor, *Elizabeth Freeman, Her Case for Freedom, and the Massachusetts Constitution*, NAT'L CONST. CTR. (Apr. 13, 2021), <https://constitutioncenter.org/blog/elizabeth-freeman-her-case-for-freedom-and-the-massachusetts-constitution>; Joshua J. Shroeder, *Leviathan Goes to Washington: How to Assert the Separation of Power in Defense of Future Generations*, 15 FLA. A&M U. L. REV. 1, 20–21 (2021) [<https://doi.org/10.2139/ssrn.3707727>]; Kerri Lee Alexander, *Elizabeth Freeman*, NAT'L WOMEN'S HIST. MUSEUM (2019), www.womenshistory.org/education-resources/biographies/elizabeth-freeman (last visited July 13, 2025).

¹⁷⁰ Ms. Freeman's name was "Mum Bett" while she was enslaved. She changed her name to "Elizabeth Freeman" upon obtaining her freedom. Alexander, *supra* note 169.

¹⁷¹ *Massachusetts Constitution and the Abolition of Slavery*, MASS.GOV, <https://www.mass.gov/guides/massachusetts-constitution-and-the-abolition-of-slavery> (last visited Sept. 6, 2024).

¹⁷² *Id.*

and his wife, Hannah Ashley,¹⁷³ was “cruel” to Black people enslaved on her property.¹⁷⁴ John Ashley led meetings with prominent men at his home in 1773 that led to the drafting of the Sheffield Resolves,¹⁷⁵ a document that criticized British colonial rule and championed freedom for all mankind.¹⁷⁶ Ms. Freeman heard these discussions, as well as those surrounding the promises of liberty for all within the Declaration of Independence in 1776 and the passage of the Massachusetts Constitution in 1780.¹⁷⁷ According to one account, Ms. Freeman noticed that these discussions emphasized “that all people were born free and equal, and she thought long about it, and resolved she would try whether she did not come in among them.”¹⁷⁸ After Hannah Ashley tried to strike Ms. Freeman’s sister with a hot shovel but hit Ms. Freeman instead, leaving a gruesome scar, Ms. Freeman decided to test the declarations of freedom for all within the Massachusetts Constitution.¹⁷⁹

Ms. Freeman persuaded Theodore Sedgwick, a white male lawyer who had co-authored the Sheffield Resolves, to represent her in her lawsuit.¹⁸⁰ In May 1781, Sedgwick filed a writ of replevin¹⁸¹ demanding

¹⁷³ Suzanne Geissler Bowles, *Tapping Reeve and Mumbet: Abolishing Slavery in Massachusetts*, PRINCETON & SLAVERY, <https://slavery.princeton.edu/stories/tapping-reeve> (last visited July 24, 2025).

¹⁷⁴ Alexander, *supra* note 169.

¹⁷⁵ The document was also known as the “Sheffield Declaration.” Taylor, *supra* note 169.

¹⁷⁶ *Jury Decides in Favor of Elizabeth “Mum Bett” Freeman*, MASS HUMANS. [hereinafter *Jury Decides in Favor*], <https://www.massmoments.org/moment-details/jury-decides-in-favor-of-elizabeth-mum-bett-freeman.html> (last visited July 13, 2025). Researchers disagree on what sparked Ms. Freeman’s motive to file a lawsuit against the man who claimed to own her. See Bowles, *supra* note 173; *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁷⁷ Bowles, *supra* note 173; Alexander, *supra* note 169.

¹⁷⁸ *Jury Decides in Favor*, *supra* note 176.

¹⁷⁹ Bowles, *supra* note 173.

¹⁸⁰ *Id.* Tapping Reeve served as Ms. Freeman’s co-counsel in the suit. *Id.*

¹⁸¹ Mumbet Court Records, *Elizabeth Freeman*, MUMBET.COM, <https://elizabethfreeman.mumbet.com/who-is-mumbet/mumbet-court-records> (last visited July 14, 2025); Writ of Replevin, MASS.GOV, <https://www.mass.gov/files/replevin-332x500.jpg> (last visited July 14, 2025). A writ of replevin is a “prejudgment process ordering the seizure or attachment of alleged illegally taken or wrongfully withheld property to be held in [law enforcement]’s custody or that of another designated official, under order and supervision of the court, until the court determines otherwise.” *Writ of Replevin*, U.S. MARSHALS SERV., <https://www.usmarshals.gov/what-we-do/service-of-process/civil-process/writ-of-replevin> (last visited Oct. 3, 2025).

that Ms. Freeman and an enslaved man named Brom, be freed from captivity because they were not John Ashley's property.¹⁸² Because John Ashley rejected the writ, the county court heard Ms. Freeman's and Brom's claims on August 21, 1781, where their attorney argued that they were free under the Massachusetts Constitution.¹⁸³ The next day, a jury ruled in Ms. Freeman's and Brom's favor. The court granted their freedom and required John Ashley to pay thirty shillings in damages and five pounds, fourteen shillings, and four pence in court costs.¹⁸⁴ John Ashley appealed, but a 1783 Massachusetts Supreme Judicial Court reasoned that the state constitution abolished slavery, and John Ashley abandoned his appeal.¹⁸⁵ Ms. Freeman's proactive resistance led to the abolition of slavery in Massachusetts.¹⁸⁶ Ms. Freeman's life as a proactive resistor of the past continues to inspire those who learn of her today; people view her "as a beacon of strength and determination."¹⁸⁷

Pamela Moses is a present-day proactive resistor. She is a Black mother of two children,¹⁸⁸ in her forties,¹⁸⁹ a founding member of the

¹⁸² *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171. As one report explained, "Elizabeth Freeman was a key component in the abolition of slavery across the United States, not only because she was the first slave to successfully sue for her freedom, but also because she became a beacon of hope for others to do so as well." *Brom and Bett v. Ashley*, DIGICATION, <https://oxford-emory.digication.com/elizabeth-freeman/brom-and-bett-v-ashley> (last visited July 13, 2025).

¹⁸³ Bowles, *supra* note 173; Alexander, *supra* note 169; *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁸⁴ Mumbet Court Records, *supra* note 181; Bowles, *supra* note 173.

¹⁸⁵ *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁸⁶ Barbara Stark, *Deconstructing the Framers' Right to Property: Liberty's Daughters and Economic Rights*, 28 HOFSTRA L. REV. 963, 1014 (2000). After gaining her freedom, John Ashley asked Ms. Freeman to work for him, but she declined; Ms. Freeman worked in Sedgwick's household instead. Bowles, *supra* note 173; Alexander, *supra* note 169. Ms. Freeman bought her own home using the money she saved and was regarded as a leader in the Black community. *Id.*

¹⁸⁷ *Who is Elizabeth Freeman?*, *supra* note 168. Ms. Freeman's gravestone states, "She could neither read nor write, yet in her own sphere she had no superior nor equal." Abigail Higgins, *How Elizabeth Freeman Sued for Her Freedom—and Won*, HIST. (Mar. 22, 2019), <https://www.history.com/news/elizabeth-freeman-slavery-case-dred-scott-freedom>.

¹⁸⁸ Levine, *supra* note 19.

¹⁸⁹ *Id.* Yolanda Jones, *Local Activist Sentenced to Six Years for Illegally Registering to Vote*, DAILY MEMPHIAN (Feb. 4, 2022, at 16:45 CT), <https://dailymemphian.com/article/26895/pamela-moses-voter-registration-sentence-six-years>. For further details, see Carla Laroche, Professor of Law, Black Women's Voter Emancipation in Slavery's Afterlife, Address at the University of

Black Lives Matter chapter in Memphis, Tennessee, and an active member of her community.¹⁹⁰ Believing in the power of the United States' political process to shape the policies that affect her family and community, Ms. Moses decided to run for mayor of Memphis, Tennessee.¹⁹¹ When she tried to get her name onto the Memphis 2019 mayoral ballot, however, the Shelby County Election Commission informed her that she was prohibited from running for office and voting.¹⁹² They reported that Ms. Moses was still on probation from a 2015 felony conviction and, as a result, could not vote.¹⁹³ Tennessee, like several other states, bars people convicted of certain crimes from public office and voting,¹⁹⁴ unless the state has expunged their conviction or restored their rights. Further, the Tennessee Legislature has enumerated certain criminal offenses that trigger a lifetime ban on voting for individuals convicted of those offenses.¹⁹⁵

The Commission's claims that Ms. Moses was ineligible to vote were a surprise to her. No one had informed Ms. Moses previously that her prior convictions excluded her from voting. As Ms. Moses explained, "They never mentioned anything about voting. They never mentioned anything about not voting, being able to vote . . . none of that."¹⁹⁶ Nevertheless, since Ms. Moses believed she had completed her

Richmond Law Review Symposium: Vestiges of the Confederacy: Reckoning with the Legacy of the South (Mar. 1, 2024), in 58 U. RICH. L. REV. 653 (2024) [<https://doi.org/10.2139/ssrn.4943546>].

¹⁹⁰ Laroche, *supra* note 189, at 654.

¹⁹¹ *Id.*

¹⁹² Levine, *supra* note 19.

¹⁹³ Toby Sells, *New Trial Ordered in Voting Fraud Case*, MEMPHIS FLYER (Feb. 25, 2022, at 16:39 CT), <https://www.memphisflyer.com/new-trial-ordered-in-voting-fraud-case>. In 2021, Ms. Moses filed a federal lawsuit to challenge the constitutionality of this 2015 conviction. Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 at 1–3, *Moses v. Tennessee*, No. 2:21-cv-02643 (W.D. Tenn. Oct 12, 2021). The trial court dismissed the case in 2022. Order Granting Motion to Dismiss, Denying Petition Pursuant to 28 U.S.C. § 2254, Denying a Certificate of Appealability, Certifying that an Appeal Would Not Be Taken in Good Faith, and Denying Leave to Proceed *in Forma Pauperis* on Appeal, *Moses v. State of Tennessee*, No. 2:21-cv-02643 (W.D. Tenn. Sept. 12, 2022), Dkt. No. 38.

¹⁹⁴ TENN. CODE ANN. §§ 8-18-101, 40-29-102 (2025). People seeking to restore their voting rights must have also paid their court costs and restitution and be current on their child support payments. *Id.* § 40-29-102(c). One of Ms. Moses's prior felonies imposed a lifetime ban on voting. Levine, *supra* note 19.

¹⁹⁵ TENN. CODE ANN. § 40-29-102(b).

¹⁹⁶ Sam Levine, *The Black Woman Sentenced to Six Years in Prison Over a Voting Error*, THE GUARDIAN (Feb. 3, 2022, at 10:00 ET), <https://www.theguardian.com/us-news/2022/feb/03/fight-to-vote-tennessee-pamela-moses-convicted>.

term of probation, she sought official confirmation that she was eligible to vote under Tennessee's restoration criteria.¹⁹⁷

Ms. Moses remained undeterred after getting a court ruling stating she was still on probation that she believed was incorrect¹⁹⁸ and sought clarification directly from the probation office within the Department of Corrections.¹⁹⁹ A probation officer confirmed what Ms. Moses believed to be true—she was eligible to vote because she was no longer on probation—and the officer signed a certificate acknowledging that information.²⁰⁰ A day later, and unbeknownst to Ms. Moses, the Department of Corrections sent a letter to the Election Commission explaining that Ms. Moses could not vote because she was “still under an active felony sentence.”²⁰¹

A Shelby County Election Commission representative, whose responsibilities included helping people with convictions navigate the voter registration process, took glee in sharing Ms. Moses's voting ineligibility with a colleague. The email, in full, stated, “LOOK AT HER STATUS!!! PERMANENTLY INELIGIBLE,” with a smiley face emoji.²⁰² The administrator of elections who supervised the representative mentioned Ms. Moses's “frequent and sometimes harassing visits to our offices” as part of an excuse for the staff's delight in learning that Ms. Moses was ineligible to vote.²⁰³

¹⁹⁷ WREG NEWS, *Memphis Woman Faces Sentencing in Voter Fraud Case*, at 00:56–01:29 (YouTube, Jan. 26, 2022), <https://www.youtube.com/watch?v=Jqaxe66UzOI> (testifying that she did not receive any notice that her felony convictions banned her from voting in Tennessee). Ms. Moses's sentencing hearing likely did not include a warning about the many consequences one faces after being convicted of a felony. *See State v. Moses*, No. W2015-01240-CCA-R3-CD, 2016 Tenn. Crim. App. LEXIS 665, at *5–11 (Tenn. Crim. App. Sept. 6, 2016).

¹⁹⁸ *Local Activist Appeals Judge's Ruling That She Is Still on Probation, Which Would Rule Out a Run for Memphis Mayor*, ABC (July 11, 2019, at 10:00 CT), <https://www.localmemphis.com/article/news/investigations/i-team/local-activist-appeals-judges-ruling-that-she-is-still-on-probation-which-would-rule-out-a-run-for-memphis-mayor/522-d3771e1d-3f0d-4800-a50e-44cce478e36b>.

¹⁹⁹ Levine, *supra* note 196.

²⁰⁰ WREG NEWS, *supra* note 197, at 00:29–00:31.

²⁰¹ Eduardo Medina, *Black Woman's Bid to Regain Voting Rights Ends With a 6-Year Prison Sentence*, N.Y. TIMES (Feb. 7, 2022), <https://www.nytimes.com/2022/02/07/us/pamela-moses-sentence-tennessee.html>.

²⁰² E-mail from Vicki Collins, Shelby Cnty. Election Comm'n, to Elizabeth Exley (Sept. 4, 2019, at 09:06 CT) (emphasis in original), <https://www.documentcloud.org/documents/23320476-vicki-collins-email-to-elizabeth-exley>.

²⁰³ Levine, *supra* note 19.

Even though the probation officer gave Ms. Moses the wrong information, Shelby County District Attorney General Amy Weirich's office charged Ms. Moses with perjury on a registration form and consenting to a false entry on official election documents.²⁰⁴ After the district attorney dropped the perjury charge, Ms. Moses was convicted of the "consenting to a false entry on official election documents" charge in November 2021.²⁰⁵ Ms. Moses was detained on December 10, 2021, and held in jail awaiting sentencing.²⁰⁶ She faced a sentencing range of four to eight years in prison because of her prior felonies.²⁰⁷

During the January 26, 2022, sentencing hearing, Ms. Moses explained to the presiding judge, Judge W. Mark Ward, that she did not intend to falsify any documents.²⁰⁸ Judge Ward, however, accused Ms. Moses of knowing what she was doing, claiming, "You tricked the probation department into giving you a document saying that you were off probation."²⁰⁹ Four days later, Judge Ward announced Ms. Moses's punishment: six years and a day in prison.²¹⁰ Ms. Moses followed the disenfranchisement maze as required and the state incarcerated her. After receiving information about the probation officer's actions that the state did not provide to Ms. Moses before the trial, the judge granted a new trial.²¹¹ On the eve of the new trial, the prosecution

²⁰⁴ *Id.*

²⁰⁵ *Id.*; Press Release, Shelby Cnty. Dist. Att'y, Woman Sentenced in Illegal Voting Sign-Up (Jan. 31, 2022), <https://www.scdag.com/news-releases/woman-sentenced-in-illegal-voting-sign-up>; Medina, *supra* note 201.

²⁰⁶ WREG NEWS, *supra* note 197, at 0:25-0:35.

²⁰⁷ *Id.* at 00:35-00:45.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 00:57-01:03. The judge's characterization of Ms. Moses follows the perpetual tropes of Black women as angry and manipulative. See Laroche, *supra* note 28, at 2444-45. These racist and sexist tropes of Black women developed during slavery and continue in slavery's afterlife. See *supra* Part I.A.

²¹⁰ Judge Ward noted that he would consider releasing Ms. Moses after nine months and placing her on probation if Ms. Moses completed certain programs and had good behavior during her incarceration. *Legal Experts Baffled by Sentence for Registering to Vote*, ASSOCIATED PRESS NEWS (Feb. 9, 2022, at 16:28 ET), <https://apnews.com/article/voting-rights-memphis-tennessee-voting-voter-registration-7c48535b436c0d77ba0b4afbe0069668>.

²¹¹ Laroche, *supra* note 189, at 655-56; see also E-mail from Joe S. Williams, Corr. Adm'r, to Lisa Helton (Sept. 5, 2019, at 12:40 CT), <https://s3.documentcloud.org/documents/21272992/pages/pamela-moses-email-redacted-p1-xlarge.gif?ts=1645633228816> ("Manager Billington failed to adequately investigate the status of this case."); Sam Levine, *New Evidence Undermines Case Against Black US Woman Jailed for Voting Error*, THE GUARDIAN (Feb. 24, 2022, at 10:00 ET),

dropped the charge. District Attorney General Weirich criticized Ms. Moses for not simply taking a plea, stating, “I gave her a chance to plead to a misdemeanor with no prison time She requested a jury trial instead.”²¹² Ms. Moses insisted on her innocence, resisted the image of herself as a fraudster, won her freedom, and continued to resist voter exclusion by filing a federal lawsuit.²¹³

Ms. Moses’s proactive resistance began with her determination to seek electoral office as mayor prior to her arrest and continued through her campaign to become a U.S. Senator of Tennessee after her release.²¹⁴ Her intentional actions represent her unapologetic desire to make policy changes and decisions to benefit her community. Rather than waiting for others to free her and those around her, Ms. Moses chose to lead the charge to access political power and voter emancipation. Her resistance is one that goes against the expectations of how Black women, especially those with criminal records, should behave in the United States. She asserted her civic autonomy and independence by seeking to run for election and to register to vote. Ms. Moses refused to accept the imposed power structure—that of oppression and domination; instead, she served as an example of civic freedom. Despite enduring caging within the criminal legal system after following the disenfranchisement maze, Ms. Moses continues her resistance through campaigning for political office. Ms. Moses’s resistance reminds those seeking to diminish her power that she will enforce her rights and, if denied those rights, she will call out the barriers and discrimination for the benefit of all.

<https://www.theguardian.com/us-news/2022/feb/24/fight-to-vote-newsletter-black-woman-jailed-voting-error-evidence>.

²¹² Levine, *supra* note 19.

²¹³ Complaint at 1, *Moses v. Tennessee*, No. 2:22-cv-02720 (W.D. Tenn. Oct 21, 2022) (claiming malicious prosecution). The trial court dismissed Ms. Moses’s claims. *Moses v. Weirich*, No. 2:22-cv-02720 (W.D. Tenn. Dec. 7, 2023), Dkt. No. 48. The Sixth Circuit denied Ms. Moses’s appeal and motion to reconsider its decision. Order Denying Appeal at 2–3 *Moses v. Tennessee*, No. 24-5195, 2024 U.S. App. LEXIS 28355 (6th Cir. Nov. 7, 2024), Dkt. No.15-1; Order Denying Motion to Reconsider at 1, *Moses v. Tennessee*, 24-5195, U.S. App. LEXIS 28355 (6th Cir. Feb. 27, 2025), Dkt. No. 23-1.

²¹⁴ Ms. Moses ran for U.S. Senate in November 2024 but lost. Pamela Moses, BALLOTEDIA, https://ballotpedia.org/Pamela_Moses (last visited Feb. 1, 2025); Megan Fayard, *Pamela Moses Announces Plans to Run for Senate*, WREG (Mar. 25, 2024, at 14:04 CT), <https://wreg.com/news/local/pamela-moses-announces-plans-to-run-for-senate>.

C. *Reactive Resistance*

Reactive resistance describes Black women whose acts of resistance respond to others' attempts to keep them enslaved or incarcerated. Their initial acts were not intended to spark resistance, but punishment and caging precipitated their acts of resistance.²¹⁵ Black women in the reactive resistance class engage in defensive efforts to protect or demonstrate their autonomy in the face of slavery and its afterlife. They, for example, may engage in community advocacy in response to laws that sought to trap them in domination; rather than being the founder of campaigns, their activism developed because of direct attacks on their rights. Though reactive resistance is harder to appreciate because the resistance is not initiated by the actor's own volition, these acts are no less important to the taxonomy of resistance. The Black women who engage in reactive resistance risk their freedom by speaking out in the face of the oppression others have imposed on them.

Reactive resistance was impactful during enslavement and remains so today. During slavery, enslavers sold enslaved people they believed were causing trouble or resisting the institution of slavery; as such, "enslaved individuals lived with the constant fear that at any moment they could be sold and sent to" worse places.²¹⁶ Today, Black women who fight their criminal charges by going to trial risk the "trial penalty," which is when a person who is found guilty after trial receives a harsher sentence than a person who pleaded guilty pretrial.²¹⁷ To

²¹⁵ Inclusion in the reactive class does not mean that Black women were not addressing issues in their communities before they performed their legal acts of resistance. Rather, Black women within this category are being recognized for working to resist in a way that often does not receive publicity. As attorney and author CeLillianne Green explained, "There are so many women whom we never heard of . . . It's the quiet power and dignity of Black women who you don't know about who paved the way." DeNeen L. Brown, *The Black Women Who Paved the Way for Kamala Harris*, WASH. POST (July 23, 2024), <https://www.washingtonpost.com/history/2024/07/23/kamala-harris-black-women-politics>.

²¹⁶ Matthew Costello, *The Enslaved Households of President John Tyler*, WHITE HOUSE HIST. ASS'N (Jan. 3, 2020), <https://www.whitehousehistory.org/the-enslaved-households-of-president-john-tyler>.

²¹⁷ *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, NAT'L ASS'N CRIM. DEF. LAWS. 5–6 (2018), <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>.

react incurs the risk of enduring harsh consequences, but many Black women do so nonetheless.

Henrietta Wood's efforts to obtain her freedom before the Civil War because of other people's actions serve as an illustrative example of the experiences of reactive class members.²¹⁸ In *Sweet Taste of Liberty: A True Story of Slavery and Restitution in America*, historian W. Caleb McDaniel provides a detailed accounting of Ms. Wood's life. Born enslaved, white enslavers sold Ms. Wood following her birth in 1818 or 1820.²¹⁹ In 1848, the wife of her enslaver filed for and registered Ms. Wood's freedom in Ohio state court.²²⁰ Ms. Wood called this period her "sweet taste of liberty"²²¹ because in 1853, a white man, Zebulon Ward, led the scheme to kidnap Ms. Wood, take her to Kentucky, and sell her back into slavery.²²²

²¹⁸ Wood v. Ward, 30 F. Cas. 476, 477, 479 (C.C.S.D. Ohio 1878) (No. 17,965) (describing Ms. Wood's legal claims and granting her relief); see Hal Clay, Note, *Forty Acres and a Mule: America's Bill for Reparations is Long Past Overdue*, 24 SCHOLAR: ST. MARY'S L. REV. RACE & SOC. JUST. 505, 530 (2023); William Y. Chin, *Epigenetics and Reparations: How Epigenetics Can Help Federal Plaintiffs Meet the Constitutional Article III Standing Requirements in Reparation Lawsuits*, 22 SEATTLE J. FOR SOC. JUST. 3, 4–5 (2023); Briana P. Adams-Seaton, Note, *Sugar is Queen: Analyzing Antiguan Descendants' Case for Reparations to Harvard University*, 64 HOW. L.J. 409, 415 (2021); W. CALEB MCDANIEL, *SWEET TASTE OF LIBERTY: A TRUE STORY OF SLAVERY AND RESTITUTION IN AMERICA* 3–4, 217 (2019).

²¹⁹ MCDANIEL, *supra* note 218, at 17 & 263 n.1. Historians are unable to determine Ms. Wood's actual year of birth. McDaniel notes, "Nineteenth-century records about [B]lack women in particular faced an uphill battle for survival in the archives. Glimpsing their stories now requires peering through and around a multitude of blinds." *Id.* at 245.

²²⁰ Ohio was a free state, and one state court judge had ruled that once an enslaved person stepped foot in Ohio, they were free automatically. *Id.* at 46. Even with this court ruling, white enslavers ignored the immediacy of Black people's freedom when traveling to Ohio. *Id.* Ms. Wood lived in the state for a year before her enslaver filed the official paperwork that confirmed Ms. Wood was free. *Id.* at 49. Even after becoming "free" on paper, Ms. Wood's former enslaver expected Ms. Wood to work for her and did not pay Ms. Wood for the work she completed. *Id.* at 50–51. After a year of working for her former enslaver, Ms. Wood negotiated employment with other white employers, on her own terms. *Id.* at 51–53.

²²¹ *Id.* at 13.

²²² *Id.* at 3; Jacqueline Hudson, *Henrietta Wood: The Enslaved Woman Who Sued for (and Won) Reparations*, NAT'L UNDERGROUND R.R. FREEDOM CTR.: FREEDOM CTR. VOICES (Oct. 7, 2022), <https://freedomcenter.org/voice/henrietta-wood>; W. Caleb McDaniel, *In 1870, Henrietta Wood Sued for Reparations—and Won*, SMITHSONIAN MAG. (Sept. 2019), <https://www.smithsonianmag.com/history/henrietta-wood-sued-reparations-won-180972845>; Jerkins, *supra* note 167. The daughter of Ms. Wood's former enslaver encouraged Ward to re-enslave Ms. Wood. MCDANIEL, *supra* note 218, at 13.

Soon after Ms. Wood's false imprisonment, a freedom suit was filed on Ms. Wood's behalf in Kentucky.²²³ The suit sought a declaration that Ms. Wood was being held unlawfully and a judgment that authorized Ms. Wood to regain her freedom.²²⁴ Though legally free, the court refused to allow her release pending trial; for over a year, Ms. Wood was incarcerated in a jail and forced to work for the jailer's benefit.²²⁵ Unfortunately for Ms. Wood, Ward convinced the court that Ms. Wood "belonged" to him and the judge denied her request to be freed.²²⁶ Because of this decision, Ms. Wood remained enslaved for fifteen years.²²⁷

In 1869, after she was freed a second time,²²⁸ Ms. Wood returned to Ohio. Two years later, she filed a lawsuit in state court against Ward for her fifteen years of false imprisonment.²²⁹ In her suit, Ms. Wood requested \$20,000 in restitution.²³⁰ Although Ward presented legal and factual defenses to defeat Ms. Wood's claims, the jury found in Ms. Wood's favor in 1878 and awarded her \$2,500.²³¹ The judgment against Ward is the largest known damages award for slavery.²³² Ward was embarrassed that an all-white jury sided with Ms. Wood.²³³ By declining to award the full \$20,000 that she sought, however, the jury refused to acknowledge and value all Ms. Wood had lost over her fifteen years of unlawful re-enslavement. Ms. Wood longed to be free from enslavement, yet, racism and sexism within the legal system limited her yet again. Receiving the \$2,500 judgement against Ward did not erase

²²³ MCDANIEL, *supra* note 218, at 75–78.

²²⁴ *Id.* at 78.

²²⁵ *Id.* at 87–88.

²²⁶ Ms. Wood's attorney filed an appeal, but, because a fire destroyed the records, we do not know what the parties argued. *Id.* at 96. The Kentucky Court of Appeals affirmed the trial court's decision that Ward "owned Ms. Wood. *Id.* at 97. State prosecutors indicted Ms. Wood's kidnappers in Ohio. *Id.* at 76–77. The proslavery judge who presided over the criminal case ruled that the U.S. Supreme Court had voided the criminal statute that made it illegal to kidnap a free Black person and a jury acquitted Ms. Wood's kidnappers after that ruling. *Id.* at 91–92.

²²⁷ *Wood v. Ward*, 30 F. Cas. 476, 477–78 (C.C.S.D. Ohio 1878) (No. 17,965).

²²⁸ MCDANIEL, *supra* note 218, at 166–68, 177.

²²⁹ *Wood*, 30 F. Cas. at 477–78; MCDANIEL, *supra* note 218, at 188–90, 198–99.

²³⁰ *Wood*, 30 F. Cas. at 477.

²³¹ *Id.* at 477, 479; MCDANIEL, *supra* note 218, at 7.

²³² Adams-Seaton, *supra* note 218, at 415.

²³³ MCDANIEL, *supra* note 218, at 3–4 (noting that the monetary award caused Ward "great embarrassment" and amazed the public who learned of it).

the repeated disappointments Ms. Wood faced while seeking emancipation.

Like Ms. Wood, Crystal Mason has experienced repeated disappointments using the legal system today.²³⁴ Ms. Mason is a Black mother who pleaded guilty to a felony in federal court,²³⁵ and, in 2011, the court “sentenced her to five years’ imprisonment and three years of supervision after her release and ordered her to pay full restitution.”²³⁶ Two years later, after Ms. Mason’s appeals process had run, the local elections supervisor’s office mailed notices to Ms. Mason’s home address letting her know of her ineligibility to vote. Ms. Mason, however, was in federal prison at that time and did not receive any of these notices.²³⁷

Upon her release in August 2016, Ms. Mason returned home and began serving her three-year term of supervised release.²³⁸ A probation supervisor testified that no one informed Ms. Mason of the voter exclusion laws and policies that applied upon her release.²³⁹ Kenneth Mays, a probation supervisor, admitted, “That’s just not something we do. In my opinion, that’s common knowledge, but that’s not something we do.”²⁴⁰

In November 2016, Ms. Mason went to her local polling place after promising her mother she would not miss the opportunity to vote.²⁴¹ Ms. Mason’s name was not on the voter rolls—because she was on supervised release and ineligible to vote—and Ms. Mason cast a

²³⁴ Cynthia Alkon, *The Lost Promise of Lambert v. California*, 49 STETSON L. REV. 267, 285–86 (2020); Benjamin Plener Cover, *Voter Fraud Mistake*, 33 WM. & MARY BILL RIGHTS J. 709, 712–13 (2025).

²³⁵ *United States v. Mason-Hobbs*, Nos. 13-CV-078-A, 11-CR-151-A-1, 2013 WL 1339195, at *5 (N.D. Tex. Apr. 3, 2013).

²³⁶ *Mason v. State*, 663 S.W.3d 621, 624 (Tex. Crim. App. 2022); see Transcript of Record at 17:8–14, *Mason v. State*, 598 S.W.3d 755 (Tex. App. 2020) (No. 02-18-00138-CR), <https://www.documentcloud.org/documents/6219544-Crystal-Mason-Trial-Transcript.html#document/p20/a514777>.

²³⁷ Taylor Barnes, *Texas Mother Crystal Mason Appeals Five-Year Sentence for Illegal Voting*, CNN (Sep. 11, 2019), <https://www.cnn.com/2019/09/10/us/texas-woman-ineligible-voting-appeal/index.html>.

²³⁸ Transcript of Record, *supra* note 236, at 20:6–8.

²³⁹ *Mason*, 663 S.W.3d at 625.

²⁴⁰ Transcript of Record, *supra* note 236, at 20:9–17.

²⁴¹ Laroche, *supra* note 189, at 664–65; see also Sam Levine, *Crystal Mason on a Ruling That Could Change Her Life: ‘I Know This Is Not Over,’* THE GUARDIAN (May 12, 2022), <https://www.theguardian.com/us-news/2022/may/12/crystal-mason-texas-court-ruling-fight-to-vote>.

provisional ballot.²⁴² Though her vote never counted, prosecutors charged Ms. Mason with voting while ineligible.²⁴³ Under section 64.012(a)(1) of the Texas Election Code, “[a] person commits an offense if the person . . . votes or attempts to vote in an election in which the person knows the person is not eligible to vote.”²⁴⁴ In 2018, Ms. Mason was tried and convicted of the offense, and the trial court sentenced her to five years in prison that same day.²⁴⁵ The Texas Second Court of Appeals affirmed Ms. Mason’s conviction in 2020.²⁴⁶ The Second Court of Appeals held that Ms. Mason did not need to know that she was ineligible to vote when she submitted her provisional ballot.²⁴⁷ That Ms. Mason was ineligible, knew she was on supervised release, and voted were sufficient to violate the statute. Ms. Mason then appealed her conviction to the Texas Court of Criminal Appeals, the state’s highest appellate criminal court.²⁴⁸

In 2021, Ms. Mason’s lawyers filed a supplemental brief arguing that the Texas Legislature passed new voting laws that made Ms. Mason’s conviction and sentence invalid.²⁴⁹ In May 2022, the Court of Criminal Appeals held that Ms. Mason’s provisional ballot was a “vote” for the purposes of Texas’ elections laws.²⁵⁰ Nonetheless, the Court of Criminal Appeals held, “[T]he court below erred by failing to require proof that [Ms. Mason] had actual knowledge that it was a crime for her to vote while on supervised release.”²⁵¹ The Court of Criminal Appeals remanded Ms. Mason’s case to the Second Court of Appeals and mandated that it review the evidence in Ms. Mason’s records based on a knowledge *mens rea*.²⁵² The Second Court of Appeals heard oral arguments on the matter in 2023 and issued its order acquitting Ms.

²⁴² Laroche, *supra* note 189, at 665.

²⁴³ Barnes, *supra* note 237.

²⁴⁴ TEX. ELEC. CODE ANN. § 64.012(a)(1) (West 2023).

²⁴⁵ Laroche, *supra* note 189, at 665.

²⁴⁶ *Mason v. State*, 598 S.W.3d 755, 762–63 (Tex. App. 2020), *aff’d in part and remanded in part*, 663 S.W.3d 621 (Tex. Crim. App. 2022).

²⁴⁷ *Id.* at 780–81.

²⁴⁸ See Appellant’s Brief on the Merits, *Mason v. Texas*, No. PD-0881-20, 2021 WL 2181846, at *11, *50 (Tex. Crim. App. May 18, 2021).

²⁴⁹ Appellant’s Supplemental Brief, *Mason v. Texas*, No. PD-0881-20, 2021 WL 5995157, at *1, *6–7 (Tex. Crim. App. Dec. 7, 2021).

²⁵⁰ *Mason v. State*, 663 S.W.3d 621, 634–35 (Tex. Crim. App. 2022).

²⁵¹ *Id.* at 624.

²⁵² *Id.*

Mason in March 2024.²⁵³ In acquitting Ms. Mason of the voter fraud charge, the court held that the prosecutor failed to present sufficient evidence to prove Ms. Mason's guilt.²⁵⁴ The prosecutor has since appealed that decision to the Texas Court of Criminal Appeals,²⁵⁵ and that court has decided to take that discretionary appeal.²⁵⁶ Ms. Mason's case remains pending, more than nine years after she cast a provisional ballot.

Ms. Mason's voting resistance began more subtly than Ms. Moses's did yet is still critical to opposing the shadow of slavery's afterlife. Ms. Mason's everyday practice started with a promise to her mother to cast her ballot in an election. The act of voting itself holds people seeking political office and those hoping to maintain political power accountable. Ms. Mason's presence in the polling place and casting the provisional ballot were straightforward demands to be included in the electorate. The government's prosecution of Ms. Mason's mistaken belief that she was eligible to vote aims to punish Ms. Mason's participation in the electoral process.

Ms. Mason's resistance revolves around her refusal to plead guilty to her attempt to exercise her political power through the ballot box, instead she has demanded that the prosecutor and judiciary hold true to the fairness and leniency they often show other people.²⁵⁷ Only 2 percent of criminal cases go to trial, instead individuals plead guilty through negotiations and deals.²⁵⁸ Ms. Mason's continued resistance is part of that 2 percent. Rather than plead guilty to an act she did not

²⁵³ *Mason v. State*, 687 S.W.3d 772, 774 (Tex. App. 2024), *petition for discretionary rev. granted* (Aug. 21, 2024).

²⁵⁴ *Id.* at 785.

²⁵⁵ State's Petition for Discretionary Review at 21, *Mason v. State*, No. PD-0300-24 (Tex. Crim. App. Apr. 25, 2024).

²⁵⁶ *State v. Mason*, No. PD-0300-24 (Tex. Crim. App. August 21, 2024); Order Granting Discretionary Review, No. PD-0300-24 (Tex. Crim. App. August 21, 2024).

²⁵⁷ For example, a former Republican Justice of the Peace in the same county as Ms. Mason was sentenced to five years' probation after pleading "guilty to using fake signatures to secure his place on an election ballot" in 2018. Emily Wolf, *Crystal Mason Gains Support from Prosecutors in Appeal of Illegal Voting Conviction*, FORT WORTH REP. (Feb. 20, 2023), <https://fortworthreport.org/2023/02/20/crystal-mason-gains-supports-from-prosecutors-in-appeal-of-illegal-voting-conviction>. And, in 2015, a woman received an alternative to incarceration outcome after she pled guilty to making her son impersonate her husband to vote on his behalf. *Id.*

²⁵⁸ THEA JOHNSON, AM. BAR ASSOC., 2023 PLEA BARGAIN TASK FORCE REPORT 36 n.2 (2023), https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/rports/plea-bargain-tf-report.pdf.

know was illegal, Ms. Mason has continued fighting against the caging of her body and for her rights since casting a provisional ballot in 2016. Her legal case has gained statewide and national attention. Ms. Mason continues to fight the state of Texas to avoid recapture.

While Ms. Mason and Ms. Wood are resisters, it did not begin intentionally, which makes their resistance different from Ms. Freedman's and Ms. Moses's membership in the proactive resistance class. Ms. Mason did not seek to involve herself in a legal battle for her freedom upon being released from prison and casting a provisional ballot in 2016. In fact, Ms. Mason admitted, "I would never do anything else to jeopardize to lose my kids again. I was happy enough to come home and see my baby graduate, my daughter. Now my son is graduating again. I wouldn't have dared went to the poll[s] to vote."²⁵⁹ Similarly, Ms. Wood had experienced years of freedom from enslavement before someone else snatched that freedom away from her. Yet through their attempts to reverse their return to captivity, Ms. Wood and Ms. Mason pushed for justice and against the use of the law to inhibit their freedom.

D. *Resistance's Risks & Harms*

The women discussed in this Section risked and continue to risk cognizable and unknown harms in performing their acts of resistance. From reincarceration to enduring the stress of fighting entrenched foes, their resistance and persistence come at immeasurable costs to themselves and their loved ones. During enslavement, Ms. Freeman and Ms. Wood risked continued enslavement while looking to the court for their freedom. Ms. Freedman succeeded in gaining her freedom, but Ms. Wood did not. In the afterlife of slavery, Ms. Mason and Ms. Moses were separated from their families and incarcerated yet again because of their desire to exercise political power.²⁶⁰ In Ms. Mason's case, she cast her provisional ballot in November 2016, and yet she continues to wait for the conclusion of her case in 2025. We

²⁵⁹ Appellant's Brief on the Merits at 12, *Mason v. State*, 687 S.W.3d 772 (Tex. Crim. App. 2021) (No. PD-0881-20). For further details, see Laroche, *supra* note 189, at 664–669.

²⁶⁰ When law enforcement officers, prosecutors, the judiciary, and the executive branch target Black women with criminal convictions, they separate them from their families. See generally Barbara Rodriguez, *States Are Stepping Up Prosecutions for Voter Fraud. But Who Gets the Harshes Punishment?*, 19TH NEWS (Oct. 6, 2022, at 06:00 ET), <https://19thnews.org/2022/10/state-election-voter-fraud-prosecutions-harsh-sentences>. Families must endure the impact of this separation as well. Laroche, *supra* note 50, 527.

cannot ignore the stress and associated health problems her fight against the state of Texas may bring about as her case travels up and down the appellate process.²⁶¹ In Ms. Moses's case, upon the court granting her a new trial, she broke down and cried in the courtroom.²⁶² Ms. Moses affirmed that she rejected a plea deal offer from the prosecutors, continued to defend her case, and was willing to go back to jail on principle. Her emotional response to the court vacating her six-year criminal sentence and ending her separation from her family reflects what she, and other Black women, endure when resisting slavery's afterlife.²⁶³ Although Ms. Moses did not regret her acts of legal defiance, her experience reminds us that the attacks on her persistent efforts aim to wear her down.²⁶⁴

III. TOWARD VOTER EMANCIPATION

Evaluating Black women's historical and present-day resistance highlights that the taint of the afterlife of slavery requires the elimination of voter exclusion based on criminal convictions and the need and demand for acknowledgement, equality, and justice. Black women insist on being treated with dignity and humanity, even in the face of critique and the risk of caging.²⁶⁵ Black women's persistence in these legal and political spaces of exclusion highlight their dedication to emancipation.

²⁶¹ Alice Abrokwa, *Stolen Futures and the Afrofuturist Case for Universal Healthcare* 17–18 (unpublished manuscript) (on file with author) (analyzing the impact of stress from litigation).

²⁶² Levine, *supra* note 19.

²⁶³ *Id.* Levine, *supra* note 196 (quoting Ms. Moses, who called her criminal case “traumatic”).

²⁶⁴ As bell hooks perceived in *Ain't I a Woman: Black Women and Feminism*,

Usually when people talk about the “strength” of [B]lack women they are referring to the way in which they perceive [B]lack women coping with oppression. They ignore the reality that to be strong in the face of oppression is not the same as overcoming oppression, that endurance is not to be confused with transformation.

BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 6 (1981).

²⁶⁵ As Anika Collier Navaroli, a whistleblower at the social media company X, professed about Black women's efforts, “Our contributions, our brains, our bodies, deteriorate under the weight of the work of doing this thing and creating safety that we don't ever get the credit, acknowledgement, profit from.” Ese Olumhense, *Whistleblowing While Black: How Truth-Telling Changes the Careers of Black Women in Tech*, 19TH NEWS (Mar. 13, 2024, at 08:00 ET), <https://19thnews.org/2024/03/black-women-tech-whistleblowers>.

In the hours after President Biden announced he would not be running for reelection in 2024 and endorsed Vice President Harris as the next Democratic presidential nominee, over 44,000 Black women joined a Zoom session hosted by Win with Black Women to strategize ways to combat the racism and sexism they anticipated Vice President Harris, a Black and Asian woman, would experience on the campaign trail.²⁶⁶ According to Jotaka Eaddy, the founder of Win with Black Women,²⁶⁷ the organization's initial meetings in 2020 were borne out of the desire to counter the racism and misogyny Black women endured as they were considered as potential vice presidential candidates.²⁶⁸

Ms. Eaddy explained that she views the group's efforts and persistence as "a collective love letter, from Black women to ourselves. And it belongs to all of us."²⁶⁹ For Ms. Eaddy and other Black women who face and witness racist and gendered targeting, their acts of resistance and those of the Black women described in this Article can be seen as methods of protection and ways to support each other. Through proactive and reactive resistance and working against the negative tropes, Black women not only highlight the punishment imposed on them, but also push back against the idea that they should be punished in the first place.²⁷⁰ They work against the "bigger agenda" to subvert "participation in democracy and women holding office," as researcher Melanie Smith put it.²⁷¹

²⁶⁶ Errin Haines & Jennifer Gerson, *Four Hours, 44,000 Black Women and One Zoom Call*, 19TH NEWS (July 23, 2024, at 11:56 ET), <https://19thnews.org/2024/07/win-with-black-women-zoom-call-harris-organizers>.

²⁶⁷ ABOUT #WINWITHBLACKWOMEN, WINWITHBLACKWOMEN.ORG, <https://www.winwithblackwomen.org> (last visited August 1, 2025) (listing one of collective's goal as "[e]liminating the racist and sexist attacks on Black women").

²⁶⁸ *Id.*; see also Haines & Gerson, *supra* note 266.

²⁶⁹ Haines & Gerson, *supra* note 266; see also Janice Gassam Asare, *How Current Events Are Impacting Black Women*, FORBES (Jul 30, 2024, at 16:53 ET), <https://www.forbes.com/sites/janicegassam/2024/07/29/how-current-events-are-impacting-black-women> ("Black women are always expected to be everyone's saviors but who is coming to save Black women? . . . When the world proves too harsh to bear, Black women must always remember that in community with other Black women is where revival, restoration, and respite will come from.").

²⁷⁰ See Alice Ristroph, *Respect and Resistance in Punishment Theory*, 97 CAL. L. REV. 601, 628 (2009) (using Thomas Hobbes' writings to analyze right to resist punishment).

²⁷¹ Rodriguez, *supra* note 2; see also Tensley, *supra* note 12. For instance, Brittany Martin, a mother of five children, was sentenced to four years in prison because she yelled at police officers during a nonviolent protest she led in South Carolina after a police officer murdered George Floyd, an unarmed Black man, in 2020. Christina

To end the need to engage in this personal fight against injustice requires giving Ms. Moses, Ms. Mason, and other Black women the freedom to live without the fear of criminalization and being used as a tool for suppression. The United States must destroy the racial and gender tropes that remain from the slavery period, recognize past racism and sexism against Black women, and reckon with accepting and enforcing Black women's freedom.²⁷²

A. *Legal Reform*

Along with changing the way society treats and degrades Black women, the United States must achieve voter emancipation. Because voter exclusion based on criminal convictions depends on individuals having criminal records, Black women would not face recriminalization in this context if state and federal governments did not arrest and prosecute Black women in the first place. Rather than using the criminal legal system to control and regulate Black women, authorities must address mass incarceration and offer supports that keep Black women out of the system overall. Without a criminal conviction, they would not have to fear registering to vote and voting while ineligible.

Carrega, *South Carolina Punished a Black Woman for Protesting. Her Supporters Demand Her Release.*, CAP. B NEWS (Mar. 11, 2024), <https://capitalbnews.org/incarcerated-for-protesting>. Ms. Martin did not have a criminal record. Because she resisted the expectations that she be “polite” in calling out injustice, she was charged with “breaching the peace in a high and aggravated manner,” and she faced the wrath of the criminal legal system. *Id.* While serving her four-year sentence, the South Carolina Court of Appeals rejected her argument that her conviction should be reversed and that her sentence was excessive. Christina Carrega, *South Carolina Court Upheld Brittany Martin’s 4-Year Sentence for Protesting*, CAP. B NEWS (Aug. 14, 2024), <https://capitalbnews.org/brittany-martin-protester-appeal-denied>. Reportedly, Ms. Martin, “may be the only known leader of protests during the civil unrest of 2020—and perhaps in the state’s history—who was sent to prison without laying a finger on a police officer or damaging property.” Carrega, *supra* note 271. Supporters of Ms. Martin noted that charging and incarcerating her served as a threat to other Black people not to protest or risk the same punishment. *Id.*

²⁷² This racial and gender justice process should include public apologies, reparations, and asking Black women what other forms of repair and healing should entail. Recognition of their efforts is only a start; more is required for the costs they have been forced to pay. For a discussion on reparative proposals to address enslavement, for example, see Robert Westley, *Restitution Claims for Wrongful Enslavement and the Doctrine of the Master’s Good Faith*, 3 BRIT. J. AM. LEGAL STUD. 287 (2014). Ms. Moses and Ms. Mason are part of a movement to gain emancipation, though history often ignores or devalues their contributions.

One of the best ways to accomplish voter emancipation would be to support interventions proposed by, led by, and focused on Black women who are directly impacted by voter exclusion based on criminal convictions.²⁷³ The separation of people from their families and the need to fight against the state to protect their freedom warrants abolishing voter exclusion based on criminal conviction altogether. Doing so is the only way that people with criminal convictions may get closer to voter emancipation. To support this disenfranchisement authorizes continued oppression that the United States claimed to abolish after the Civil War. Those who were against emancipation of Black people after the Civil War found ways to sustain slavery through constitutional carve outs, and the same would occur for voter exclusion should any exception exist.²⁷⁴

This Article has demonstrated that people—particularly Black women—with criminal convictions face harsh punishment because of their criminal records. Even when others have committed intentional voter fraud, they do not receive the yearslong sentences that Black women have received. Individuals may consider filing selective prosecution claims in these instances.²⁷⁵ Though a difficult test to prove, with the evidence described in this Article, Black women accused of voter fraud for registering and/or voting while ineligible

²⁷³ In a prior article, I recommended that the United States should eliminate voter exclusion based on criminal convictions altogether. Laroche, *supra* note 28, at 2487–95 (2022). I emphasized that the United States needs state and federal initiatives that weaken and ban voter exclusion schemes. *Id.* at 2492–93. Other recommendations included “divesting from whiteness [by] rejecting the continuous benefits white society receives from denying Black women the right to vote,” applying intersectional analysis in court decisions, and developing mutual aid projects led by and focused on Black women with convictions that also educates people about the systemic issues responsible for racist and sexist injustices. *Id.* at 2489.

²⁷⁴ *Id.* at 2492–95.

²⁷⁵ In *United States v. Armstrong*, 517 U.S. 456 (1996), while emphasizing that prosecutors have broad discretion to decide to prosecute individuals, *id.* at 464, the U.S. Supreme Court explained the standard an accused must reach to satisfy a selective prosecution claim. *Id.* 465. Under the Due Process Clause of the Fifth Amendment, states may not charge people based on their protective class status. *Id.* The accused “must present ‘clear evidence’” demonstrating that the prosecutors violated the presumption that they followed equal protection requirements, *id.* (quoting *United States v. Chem. Found.*, 272 U.S. 1, 14–15, (1926)), by showing that the prosecutors’ decision “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Id.* (quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985)). The individuals must prove that the state did not prosecute similarly situated people who committed the same crimes. *Id.*

because of a criminal conviction may have evidence available to prove this claim.

Voter exclusion based on criminal convictions exists in the afterlife of slavery because state and federal constitutions, laws, and policies authorize it. Further, courts have yet to hold that this voter exclusion violates the constitution. To end the need for resistance requires courts to find voter exclusion based on criminal convictions, in all forms, unconstitutional. Recent state reforms to voter exclusion laws continue to ban certain groups from voting, including people who are incarcerated, people with particular criminal offenses, and people who have not completed a mandatory waiting period after their conviction or release.²⁷⁶ Courts should recognize how these consequences violate cruel and unusual punishment under the Eighth Amendment²⁷⁷ or a badge of slavery outlawed by the Thirteenth²⁷⁸ and Fifteenth Amendments.²⁷⁹

A constitutional amendment guaranteeing the right to vote for all must exist. Richard L. Hasen has emphasized the need for a federal constitutional amendment to protect the right to vote; he remarked that an amendment would require courts to reject restrictive voting efforts and empower voters to sue elections officials who infringe on their right to vote.²⁸⁰ A true right to vote would require states to do more work to justify the limitations they put on voting and voting access. The path to a right to vote amendment entails advocating for change in the name of overcoming oppression and undoing the

²⁷⁶ See *Restoration of Voting Rights for Felons*, Nat'l Council of State Leg. (Aug. 19, 2025), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> (describing state law changes on voter exclusion based on criminal convictions).

²⁷⁷ U.S. CONST. amend. VIII. Mississippi plaintiffs challenged the state's lifetime voting ban for certain felony convictions based on Eighth Amendment grounds, but the U.S. Court of Appeals for the Fifth Circuit, *en banc*, ruled in the state's favor. *Hopkins v. Watson*, 108 F.4th 371, 375 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 1138 (Jan. 27, 2025) (No. 24-560).

²⁷⁸ *The Civil Rights Cases*, 109 U.S. 3, 8–9 (1883).

²⁷⁹ Scholars have emphasized the judiciary's ability to uphold a constitutional right to vote and the importance of it doing so. See Bertrall L. Ross II, *Fundamental: How the Vote Became a Constitutional Right*, 109 IOWA L. REV. 1703, 1767 (2024) ("If the Supreme Court takes its own constitutional interpretive methodology seriously, it should find the constitutional right to vote to be deeply rooted in the Constitution's text, as well as the nation's enduring history and tradition, and confirm its role in securing democratic republics throughout the United States.").

²⁸⁰ RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY 101, 128 (2024).

current attempts to diminish electoral power.²⁸¹ Recognizing that a constitutional amendment is not possible today and complete abolition will take time, I offer proposals that are achievable in the short term as well.²⁸²

Many state and local election offices have established laws, rules, and procedures that people must follow to restore their voting rights. State-by-state variations on eligibility, as well as misinterpretation, bias, and disinformation cause further fear of being ensnared in the criminal legal system for seeking to vote, as Ms. Moses's and Ms. Mason's experiences demonstrate. States should not allow these procedures to enable biases and racism to restrict access to voter registration and voting. Because the disenfranchisement maze benefits from misinformation and confusion, the burden should be on the state to ensure clarity.

States should provide automatic voter registration for people who become eligible to vote after a criminal conviction. Michigan, which has had automatic voter registration since 2019, became the first state to require automatic registration of people released from the Department of Corrections.²⁸³ Subsection 493b(6) of the Michigan law, enacted in 2023 and effective as of June 30, 2025, requires the automatic registration of all individuals who are scheduled to be released from incarceration and parole.²⁸⁴ The Secretary of State and Department of Corrections coordinated implementation of this mandate and must offer people the option of declining the automatic

²⁸¹ Cynthia Richie Terrell, *What's at Stake in Louisiana v. Callais—and Why it Matters for Women*, MS. MAGAZINE (Oct. 17, 2025), <https://msmagazine.com/2025/10/17/louisiana-v-callais-women-voting-rights-act> (explaining how women of color running for political office would have a harder time getting elected if the U.S. Supreme Court rules in *Louisiana v. Callais* that the Voting Rights Act did not bar racial vote dilution, which is when states implement district maps that weaken the votes of people of color); *Louisiana v. Callais* FAQ, LEGAL DEFENSE FUND, <https://www.naacpldf.org/case-issue/louisiana-v-callais-faq> (last visited Oct. 19, 2025) (stating that “*Louisiana v. Callais* impacts not only Black voters in Louisiana but every voter in this country, who risks losing their say in how America’s future unfolds if voter protections are further weakened.”).

²⁸² Akbar, *supra* note 24, at 2507, 2510; Laroche, *supra* note 50, at 548.

²⁸³ Ben Orner, *Michigan is First State to Automatically Register Ex-Prisoners to Vote*, MLIVE (Dec 1, 2023, at 8:00 ET), <https://www.mlive.com/politics/2023/12/michigan-is-first-state-to-automatically-register-ex-prisoners-to-vote.html> (stating that Michigan expanded automatic voter registration to people who would have their votes restored upon release from incarceration or parole); *see also* MICH. COMP. LAWS § 168.493b(6) (2023).

²⁸⁴ MICH. COMP. LAWS § 168.493b(6) (2023).

registration, but they cannot presume declination.²⁸⁵ All states should replicate and extend Michigan's easy-to-implement automatic registration law so that all people who are eligible to vote, including Black women, do not have to fear violating the disenfranchisement maze unwittingly.²⁸⁶

To alleviate the fear of incarceration based on lack of information or receipt of incorrect information, states should have to satisfy the fundamental right to due process in all elements of voter exclusion based on criminal convictions and the disenfranchisement maze. States must provide actual notice to every person they deem ineligible to vote because of criminal records. Proper notice includes an explanation of whether the state has taken a person's voting right away and a description of the specific process a person must complete to regain their voting rights, if eligible to do so.²⁸⁷ This notice should occur prior to and at sentencing, as well as prior to release and any post-conviction regulation requirements.

When loss of liberty and the vote are at stake, states must prioritize, not diminish, proper and accessible notice. Although it arises in a different context, the 1950 case, *Mullane v. Central Hanover Bank & Trust Co.*, is instructive.²⁸⁸ In *Mullane*, the U.S. Supreme Court held that the due process right of notice requires procedures that are "reasonably calculated under the circumstances" to let interested parties know that a lawsuit exists and to allow interested parties to file any objections.²⁸⁹ Further, in *Mennonite Board of Missions v. Adams*, the

²⁸⁵ *Id.*

²⁸⁶ According to the National Conference of State Legislatures, approximately twenty-five states and Washington, D.C. have implemented an automatic voter registration system. *Automatic Voter Registration*, NAT'L CONF. OF STATE LEG. (updated July 21, 2025), <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration>. This proposal would extend that system to jail and prison facilities across all jurisdictions.

²⁸⁷ See generally Naila S. Awan and Shruti Banerjee, *How to End De Facto Disenfranchisement in the Criminal Justice System*, DÉMOS (2020), https://www.demos.org/sites/default/files/2020-05/How%20to%20End%20De%20Facto%20Disenfranchisement%20in%20the%20Criminal%20Justice%20System_0.pdf (advocating for ways to protect the right to vote for people who were incarcerated previously).

²⁸⁸ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

²⁸⁹ *Id.* at 314; see also Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. REV. 1521, 1522–26 (2021) (analyzing the importance of proper notice under *Mullane* and the foundational reasons for this due process right); Jamison Wynn, *Procedural Whipsaw: Allocating the Burden of Proving Reasonable Notice to Prisoners of Forfeiture*

U.S. Supreme Court emphasized, “Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable.”²⁹⁰

For both Ms. Moses and Ms. Mason, the lack of notice about voter exclusion based on criminal convictions and the disenfranchisement maze raises due process concerns. In Ms. Moses’s case, a probation officer failed to review the correct database before certifying inaccurately that Ms. Moses was eligible to vote. The government’s own procedures and notices gave the prosecutor the opportunity to go after Ms. Moses. And the prosecutor in Ms. Mason’s case, Phil Sorrells, claimed that he appealed Ms. Mason’s acquittal because “I want would-be illegal voters to know that we’re watching And that we’ll follow the law and we will prosecute illegal voting.”²⁹¹ In claiming this goal, Sorrells ignored the evidence that Ms. Mason did not know she was ineligible to vote and seemed disinclined to prove that Ms. Mason received affirmative notice.²⁹²

A person who does not know they cannot vote after a criminal conviction must be put on notice of that ineligibility. The government bears the burden of giving people notice, and courts should require proof of actual notice to ensure prosecutors will not charge people who find themselves in circumstances like Ms. Moses and Ms. Mason. To hold both state and federal governments accountable, prosecutors must prove that the government met its due process burden before charging fraud against a person with a criminal conviction.

Providing this information is insufficient if it is not understandable. States must prove that their agencies provide people with accessible, easy-to-follow information about the ban on their right to vote. Scholars in other areas of law have recognized the importance

Proceedings and the (Renewed) Call for Actual Notice, 99 N.C. L. REV. 247, 253–55 (2020) (same).

²⁹⁰ *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983) (emphasis omitted).

²⁹¹ Keenan Willard, *Tarrant DA Defends Decision to Pursue Re-Conviction of Crystal Mason, Acquitted of Illegal Voting After 8 Years*, NBCDFW (May 7, 2024, at 22:30 ET), <https://www.nbcdw.com/news/local/tarrant-da-defends-decision-to-pursue-re-conviction-of-crystal-mason-acquitted-of-illegal-voting-after-8-years/3535638>.

²⁹² Express-News Editorial Bd., *supra* note 20.

of making descriptions of complicated laws and policies accessible.²⁹³ For example, in a critique of financial literacy programs that aim to educate people on financial markets and personal wealth development, Lauren Willis explained,

Covertly, the [financial-literacy education] model dupes consumers into thinking they can master the financial-services market, while placing blame upon them for their failure to do so, deflecting political pressure for change. But changing the personal-finance market or the manner in which consumers must maneuver in it—making the map easier to read and follow, giving them a guide, or building more direct routes to the American Dream—is likely to be more efficacious, and at a lower cost. Consumers can make welfare-enhancing choices, but to be truly autonomous, those choices must be made in a context that consumers can navigate.²⁹⁴

In Willis's analysis, merely offering information to people creates a false image of an educated consumer while ignoring the true reasons why the consumer did not understand their obligations in the first place.²⁹⁵ The same reasoning applies to the idea of proper notice to people ineligible to vote because of a criminal conviction. A document filled with legalese and contradictory information will neither be sufficient in practice nor satisfy a person's due process right to notice.²⁹⁶ As Ms. Moses's case illustrates, if a probation officer in

²⁹³ See PRINCIPLES OF THE L. DATA PRIV. § 3 cmt. a (AM. L. INST. 2020) (explaining that "commentary, scholarship, and empirical evidence suggests that traditional notice does not work").

²⁹⁴ Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 285 (2008); see also, Annamaria Lusardi & Olivia S. Mitchell, *The Importance of Financial Literacy: Opening A New Field*, 37 J. OF ECON. PERSP. 137, 149 (2023) [<https://doi.org/10.1257/jep.37.4.137>] (finding that a productive financial literacy program should make people "aware of their rights and obligations"); Paddy Hirsch, *Planet Money, The Case For Financial Literacy Education*, NPR (May 16, 2023, at 06:30 ET), <https://www.npr.org/sections/money/2023/05/16/1176189034/the-case-for-financial-literacy-education> (noting that personal finance information must retain the readers' attention).

²⁹⁵ For another example, in the civil forfeiture context, see Wynn, *supra* note 289, at 268–78 (advocating actual notice be required when states use civil forfeiture to retain the property of a person who is incarcerated).

²⁹⁶ Campaign Legal Center's RestoreYourVote.org webpage offers a great starting point to understand how to provide accessible information. *Restore Your Vote: I Have a Felony Conviction. Can I Vote?*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/restoreyourvote> (last visited Oct. 1, 2025). The site offers an online tool that allows people to answer straightforward questions to determine whether they are eligible. *Id.* ("The website serves to provide the best information available to make rights restoration accessible for citizens with felony convictions.").

Tennessee failed to accurately determine whether a person was eligible to vote, despite it being part of his employment responsibilities and his access to state resources, how transparent are these processes for individuals whose liberty is at stake?

States should move violations of the disenfranchisement maze outside of the criminal system to local administrative proceedings. That criminal prosecutors even charged Ms. Moses and Ms. Mason at all deserves reconsideration. Because of the tropes of Black women, the weaponization of the criminal legal system is a powerful tool against Black women's resistance and political power. If policymakers insist on banning people from voting and implementing the disenfranchisement maze, then they should remove enforcement of these voter exclusion laws from the criminal legal system. Scholars have recommended that the government should reform the laws criminalizing voting while ineligible because of conviction by heightening the *mens rea*, or culpable mental state, in voter fraud statutes.²⁹⁷ They, however, are misguided because, as Ms. Moses's case demonstrated, heightening the *mens rea* in criminal cases is insufficient and would not stop voter exclusion practices. The presiding judge in Ms. Moses's case imposed guilt and intentionality on her—claiming during the sentencing hearing that Ms. Moses tricked the probation officer without any evidence to substantiate that accusation—and the judge in Ms. Mason's case found her guilty after a short bench trial.²⁹⁸

States already have noncriminal procedures in place to address alleged electoral violations. When someone wants to register to vote, for example, they apply to the applicable election office. That office reviews databases to confirm that person's voter eligibility and provides notice and a hearing should they allege the person is ineligible.²⁹⁹ Or, take the case of Georgia, where an administrative judge imposed a civil punishment on a leader of the Republican party in Georgia who voted

States should review this accessible platform when implementing their own personalized notifications to individuals.

²⁹⁷ See, e.g., Cover, *supra* note 234, at 82–101 (examining how prosecutors, legislators, and judges may implement a higher *mens rea* to protect people who make unintentional voter mistakes).

²⁹⁸ WREG NEWS, *supra* note 197, at 0:57–1:03. My critique does not mean that heightening *mens rea* in criminal cases and ensuring that prosecutors meet that high burden of proof before charging an individual is not important.

²⁹⁹ For example, see ALA. CODE § 17-3-55 (2022).

nine times while ineligible, Richard Pritchard.³⁰⁰ Rather than seek criminal sanctions, the state attorney general referred the matter to an administrative judge for adjudication.³⁰¹ Pritchard had to face a public reprimand from the State Election Board and pay a \$5,000 fine.³⁰² Georgia chose the administrative route for Pritchard, a white man, and they should do the same for Black women as well.

Unlike the punishment in the Georgia matter, however, states should not impose financial penalties against individuals who violate the disenfranchisement maze process. If found liable for attempting to vote while ineligible, the administrative penalties should be nonmonetary only. The financial burden of a legal financial obligation would harm Black women; as research has shown, Black women with convictions are least likely to obtain employment and, if employed, are less likely to be hired for a full-time position than white women and men.³⁰³ As such, using the administrative process and imposing a financial punishment would continue the voter exclusion in slavery's afterlife, but in another form.³⁰⁴

Should policymakers be unwilling to address these disenfranchisement maze violations in administrative proceedings, reducing the criminal offense from a felony to a misdemeanor might seem like an appealing compromise but would not be a positive reform overall. In 2021, the Texas Legislature changed the level of offense from a felony to a misdemeanor.³⁰⁵ In doing so, the legislature thought that it would reduce the punishment people would face should they be

³⁰⁰ Mark Niese, *Judge Rules Georgia Republican Party's Vice Chairman Voted Illegally*, ATLANTA J.-CONST. (Mar. 28, 2024), <https://www.ajc.com/politics/georgia-judge-rules-that-republican-brian-k-pritchard-voted-illegally/M4A27QQNQJDW7MTI66MRF5B4EQ>. Richard Pritchard voted in Georgia while serving probation on a conviction in Pennsylvania between 2008 and 2010. Sam Levine, *Georgia Republican Official Fined \$5,000 for Voting Illegally Nine Times*, THE GUARDIAN (Mar. 28, 2024), <https://www.theguardian.com/us-news/2024/mar/28/georgia-republican-official-voting-illegally-fined>. He claimed that he was not aware he was still on probation when he voted. *Id.* The administrative judge did not find his claims credible. *Id.*

³⁰¹ Levine, *supra* note 300.

³⁰² Niese, *supra* note 300.

³⁰³ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL'Y INITIATIVE (Mar. 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.

³⁰⁴ *Id.* For a discussion of the lack of financial security and safety that exist because of people's criminal convictions and incarceration histories, see Laroche, *supra* note 28, at 2469–71; Laroche, *supra* note 50, at 544–46.

³⁰⁵ TEX. ELEC. CODE ANN. § 64.012(b) (2021).

convicted of voter fraud for voting while ineligible. While this modification is important, it does not go far enough in addressing the dangers a criminal proceeding brings about. Scholars have raised concerns about the large harm misdemeanor convictions have on individuals.³⁰⁶ Further, this recommendation does not address the injustice of being convicted of an action that is not, in fact, a crime. Unfortunately, Texas reversed course in 2023 and made the offense a felony once again.³⁰⁷

Overall, these changes in the laws and procedures would address the use of the criminal legal system to punish Black women for asserting their political and voting power. Implementing these legal recommendations would put the burden on state actors to ensure that Black women would not be forced to engage in proactive and reactive resistance to address the racial and gendered targeting of their political power in these contexts.

B. *Community Resistance*

While this Article has centered the experiences of a few Black women who defended their political and voting power, the support and efforts of other Black women and allies have magnified the force of their resistance. To address oppression within the afterlife of slavery requires a community effort. Community resistance to voter exclusion based on criminal convictions—like the resistance of Pamela Moses and Crystal Mason—may be proactive, reactive, or both; may involve people directly impacted by the criminal legal system or not; and may work to support one person targeted by the criminal legal system or broader legal reform. These individuals—many of whom may remain unknown—have also sought to dismantle the disenfranchisement maze or, at the very least, reduce its impact.

For example, advocacy groups have sought to inform people who have convictions, including those who are incarcerated in prisons and jails, about the disenfranchisement maze and whether they are eligible to vote.³⁰⁸ During the pendency of their cases, Ms. Moses and Ms.

³⁰⁶ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 715–16 (2017) [<https://doi.org/10.2139/ssrn.2809840>].

³⁰⁷ TEX. ELEC. CODE ANN. § 64.012(b) (2023).

³⁰⁸ *Operation Restoration Helping Women Impacted by Incarceration*, NOLA NOW (Dec. 10, 2024, at 11:55 ET), <https://www.nolanow.com/video/2024/12/10/operation-restoration-helping-women-impacted-by-incarceration>; Rhonda Sonnenberg, *It Takes a Village: New Orleans Group Partners With Others to Get Out the Vote*, S. POVERTY L. CTR. (Dec. 29, 2023), <https://www.splcenter.org/news/2023/12/29/new-orleans-group->

Mason elevated these issues through discussions with the press and policymakers. Voters in Tennessee rejected the local prosecutor who charged Ms. Moses and the judge who sentenced her.³⁰⁹

Some states have passed laws and constitutional amendments to grant more access to the ballot box for people with criminal convictions, but they do not go far enough; these reforms keep Black women like Ms. Moses and Ms. Mason at risk of being targeted through the criminal legal system.³¹⁰ In Ms. Mason's case, advocates have critiqued the district attorney's decision to request that the Texas Court of Criminal Appeals reverse Ms. Mason's acquittal.³¹¹ The editorial board of the *San Antonio Express-News* queried, "Why would any prosecutor waste time and energy pursuing a conviction on a case that is inconsequential?"³¹² Further, the editorial board admonished, "That this was ever prosecuted is the miscarriage of justice. That it is still being pursued is an abuse of power."³¹³ A former prosecutor exalted the need for "ethical prosecutors" to stop prosecutions like Ms.

partners-others-vote; Natalie Yahr, *Louisiana to Expand Voting Rights for People With Felony Convictions*, SCALAWAG (May 21, 2018), <https://scalawagmagazine.org/2018/05/louisiana-to-expand-voting-rights-for-people-with-felony-convictions>; Image posted by Syrita Steib (@supportsyrita), INSTAGRAM, *Early Voting* (Oct. 25, 2022), <https://www.instagram.com/supportsyrita/p/CkJgGmmt27b>; Laroche, *supra* note 28, at 2490–92; Alex Burness, *The Michigan Jail that Candidates Keep Visiting*, BOLTS (Nov. 26, 2024), <https://boltsmag.org/flint-michigan-jail-candidate-forums>.

³⁰⁹ The person elected to become the prosecutor was a former law school professor who campaigned in opposition to the prosecutor's false narratives of Ms. Moses's guilt. Levine, *supra* note 19.

³¹⁰ Nicole D. Porter et al, *Out of Step: U.S. Policy on Voting Rights in Global Perspective*, SENT'G PROJ. (2024), <https://www.sentencingproject.org/publications/out-of-step-u-s-policy-on-voting-rights-in-global-perspective>. For example, in 2021, the Texas Legislature modified its voter fraud statute to include a mens rea of intentionality, meaning a prosecutor must prove that a person intended to vote when they knew they were ineligible to do so. TEX. CODE ANN. § 64.012(a)(1) (2021) ("A person commits an offense if the person knowingly or intentionally . . . votes or attempts to vote in an election in which the person knows the person is not eligible to vote."). The state required that prosecutors provide more evidence than merely that a person cast a provisional ballot to prove a person knowingly committed an offense. *Id.* § 64.012(c). Ms. Mason awaits the resolution of her yearslong criminal case. Even though the state legislature had enacted these measures in response to her case, they were not enough to release Ms. Mason from having to continue to resist the prosecutor's charges. Laroche, *supra* note 189, at 666.

³¹¹ Express-News Editorial Bd., *supra* note 20.

³¹² *Id.*

³¹³ *Id.*

Mason's case from occurring.³¹⁴ A prosecutor's duty is to seek justice; charging individuals with registration and voter fraud in these instances brings into question whether prosecutors are truly abiding by that ethical duty.³¹⁵

Lawyers can and should address these miscarriages of justice through pro bono, or free-of-charge, representation. Whether faced with charges in the criminal legal system or the administrative legal system, people should not have to fear punishment for engaging in political participation, and they should not have to do so without zealous representation. With so many public defender offices overwhelmed by cases, local and state bars should create pro bono projects to defend the voting rights of individuals in these situations. Defending Black women's political power is crucial to ensuring states uphold the rights Black women are supposed to have. Rather than allow state actors to use the legal system to criminalize and target Black women, lawyers must work to provide the justice the legal system purports to offer. Lawyers should collaborate with people who are directly impacted by slavery's afterlife, community organizers, and advocacy groups to develop potential impact litigation and other advocacy tools to ward against state actors' continued use of voter exclusion laws to ensnare Black women.³¹⁶

³¹⁴ Gregory Nolan, *A Reversal Cannot Undo the Damage Caused by This Voting Fraud Case*, N.Y. TIMES (Apr. 4, 2024), <https://www.nytimes.com/2024/04/04/opinion/texas-florida-crystal-mason.html> ("It is unjust that some people might not vote because reckless prosecutions like Ms. Mason's intimidate them. As her case demonstrates, courts cannot stop these injustices from happening; only ethical prosecutors with a firm commitment to safeguarding constitutional rights can do that."). People targeted by prosecutors in this way should be able to bring malicious prosecution claims and to file complaints against these prosecutors.

³¹⁵ See *Criminal Justice Standards for the Prosecution Function*, Am. Bar. Ass'n 3-1.2(b) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances."); Tamika Griffin Moses, *No Knock? No Case: Prosecutorial Deterrence as a Countermeasure to No-Knock Warrants*, 2025 UTAH L. REV. 337, 373–74 (2025).

³¹⁶ Deborah N. Archer & Kele S. Williams, *Making America "The Land of Second Chances": Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. REV. L. & SOC. CHANGE 527, 546–48 (2006); see also *id.* at 560–82 (analyzing and offering potential state constitutional and statutory civil rights challenges attorneys could bring in state courts to "dismantle the labyrinth of collateral sanctions [that] . . . continue to have a

As Hasen has noted, “Legal change alone is not enough because rules for conducting fair elections are not binding without a deeper commitment to the rule of law.”³¹⁷ Those who can vote should elect candidates who do not use voter fraud rhetoric. As an example, both the prosecutor who charged Pamela Moses and the judge who sentenced her lost their elected seats in primary or general elections.³¹⁸ The less power and authority people who support voter exclusion based on criminal convictions maintain, the more people who resist may work to dismantle voter exclusion schemes and criminalization of the vote. Additionally, the community efforts toward voter emancipation reduces the risk of reincarceration for Black women seeking to vote.

Along with allied individuals and organizations, Black women’s efforts have helped to combat voter exclusion based on criminal convictions and move the United States towards voter emancipation. In doing so, Black women assert their own humanity and criticize policymakers, media, and society more generally for allowing the afterlife of slavery to exist today. Along with removing the disenfranchisement maze, the bigger task is eliminating the domination that continues today. More needs to be done to erase this shadow of slavery from the United States’ fabric because working “towards a horizon of lasting freedom,” as the Black women described in this Article have done and continue to do, does not mean the horizon of freedom is within grasp without action, resistance, and relieving Black women of the need to resist.³¹⁹

devastating impact on . . . people who are released from prison each year and on the communities they call home”).

³¹⁷ Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. F. 265, 294, 299–301 (2022) [<https://doi.org/10.2139/ssrn.3926381>] (recommending legal changes and political action to avert future attempts to subvert elections and ensure fair election administration).

³¹⁸ Levine, *supra* note 19.

³¹⁹ Riley Case, *supra* note 166, at 334; Brandon Hasbrouck, *Prisons as Laboratories of Antidemocracy*, 133 YALE L. J. 1966, 2015 (2024) (“To this end, it should be conceived as a part of the struggle for abolition democracy. Abolition democracy is the establishment of life- and liberty-affirming institutions to ensure that all people have the economic, social, and legal resources to allow them to participate in all significant aspects of public life freely, actively, and conscientiously. Abolition democracy would involve novel legal, economic, and social institutions, broadly rebuilding the structures through which we interact with each other and our society.”).

CONCLUSION

The measures this Article outlined would offer Black women protection from powerful state actors seeking to criminalize their desire to engage in the political process and gain their voter emancipation. Regarding historical slavery, the nation endured four years of war before the legal act of enslaving Black people ended, but then slavery's afterlife emerged. For Black women today, use of the political process, not violence, is needed to abolish voter exclusion based on criminal convictions and the afterlife of slavery.³²⁰ More than likely, a movement of resistance-minded people will push to abolish these voter exclusion schemes and to grant the right to vote for all. That said, even once we have achieved voter emancipation in the context of voter exclusion based on criminal conviction, other barriers to accessing the ballot box will still exist. Because states across the nation have imposed rules and restrictions on when, how, and where people may vote, true voter emancipation requires greater political participation. Justice and diversity advocates must stress the importance of access to opportunities for all.³²¹ Further, unless we abolish discriminatory and oppressive regimes and laws altogether, history will continue to repeat itself and the shadow of slavery will persist. And Black women will continue to commit proactive and

³²⁰ On January 6, 2021, insurrectionists stormed the U.S. Capitol with the hope of stopping the validation of the 2020 presidential election. Select Comm. To Investigate the Jan. 6th Attack on the United States Capitol, *About*, WEBHARVEST.GOV (Dec. 24, 2022, at 17:32 ET), <https://www.webharvest.gov/congress117th/20221224173503/https://january6th.house.gov/about>. While they used weapons and caused serious injuries and death during this attack, to the author's knowledge, no group has suggested employing violent tactics to oppose voter suppression based on criminal convictions. President Donald J. Trump has granted clemency and is considering compensating individuals convicted in federal court for their participation in the insurrection. Seb Starcevic, *Trump Floats Possibility of Compensation for Jan. 6 Rioters*, POLITICO (Mar. 25, 2025, at 11:00 ET), <https://www.politico.com/news/2025/03/25/trump-floats-possibility-of-compensation-for-jan-6-rioters-00250063>; Alan Feuer, *Already Pardoned by Trump, Jan. 6 Rioters Push for Compensation*, NY. TIMES (Aug. 31, 2025), <https://www.nytimes.com/2025/08/31/us/politics/trump-jan-6-rioters-compensation.html> (describing insurrectionists' effort to obtain reparations from the federal government because of "their suffering and that of their families").

³²¹ See, e.g., Errin Haines, *What It Takes to Defend Diversity*, 19TH NEWS (Oct. 19, 2023, at 10:33 ET), <https://19thnews.org/2023/10/dei-diversity-lawsuits-equity> (quoting Stacey Abrams, who stated, "We are made stronger as a nation when we support others having access. Mobilization has to come from every person that wants to espouse the fundamental American values that we are a diverse nation that believes in equal access and equal opportunity and that everyone has an opportunity to participate.").

reactive acts of resistance against slavery's afterlife. As the song "Freedom" exalts us to acknowledge, Black women "need freedom, too."³²²

* * *

³²² Knowles, *supra* note 7.

BLACK WOMEN AND VOTER SUPPRESSION

CARLA LAROCHE*

ABSTRACT

Black women who are eligible to vote do so at consistently high rates during elections in the United States. For thousands of Black women, however, racism, sexism, and criminal convictions intersect to require them to navigate a maze of laws and policies that keep them from voting. With the alarming rate of convictions and incarceration of Black women, criminal law intersects with civil rights to bar their involvement in the electoral process. This voting ban is known as felony disenfranchisement, but it amounts to voter suppression.

By reconceptualizing voter suppression based on criminal convictions through the experiences of Black women's access to their voting rights, this Article adds a new perspective to the rich scholarship analyzing voting rights. This Article examines the history of Black women's exclusion from the ballot box in the United States, including how the racist legacy of Jim Crow and Jane

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Crow continue through mass incarceration and voter suppression schemes. Using Florida's disenfranchisement maze as a case study, this Article shows that while Black women and other advocates have led attempts to abolish voter suppression schemes, permanently, they have yet to succeed through the judicial, executive, or legislative branches.

The ostensible reasons for these voter suppression schemes vary, but the outcome has been the devaluation of the interests of Black women and their communities while preserving the voting priorities of white communities. This Article concludes by demanding that individuals, including voters and members of all branches of the government, recognize Black women's voting rights and work to dismantle these voter suppression schemes. Until then, society will continue to bar Black women from the ballot box disproportionately and disregard the justice and democratic values the United States claims to hold dear.

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For three hundred years, we've given them time. And I've been tired so long, now I am sick and tired of being sick and tired, and we want a change.

—Fannie Lou Hamer¹

INTRODUCTION

Black women community activists and leaders have become synonymous with those who struggle to enhance voting rights access. As one summary described their efforts, “[G]enerations of Black women in particular have encouraged voter registration, organized their communities to turn out at the polls, and battled near-constant voter suppression efforts. Their tireless commitment has started to attract more attention, but their work is not done.”² The historical and societal expectations are that Black women will make sacrifices for, and represent the importance of, voting—without getting the right to vote for themselves.³

Consider, for example, Wandrea “Shaye” Moss, a thirty-seven-year-old mother and former election employee in Fulton County, Georgia, and her mother Ruby “Lady Ruby” Freeman, a sixty-two-year-old Black grandmother and former Georgia election worker⁴ with the Fulton County Department of

¹ Fannie Lou Hamer, Speech at the Mississippi Freedom Democratic Party Rally in the Williams Institutional CME Church: I’m Sick and Tired of Being Sick and Tired—Dec. 20, 1964 (Dec. 20, 2019), <https://awpc.cattcenter.iastate.edu/2019/08/09/im-sick-and-tired-of-being-sick-and-tired-dec-20-1964> [<https://perma.cc/DH6S-958E>]. Fannie Lou Hamer was a civil rights activist from Mississippi who contested the evils of segregation and worked passionately for the right to vote. *Fannie Lou Hamer*, SNCC DIGIT. GATEWAY, <https://snccdigital.org/people/fannie-lou-hamer> [<https://perma.cc/9AU6-CFBL>] (last visited Dec. 7, 2022). Hamer risked her life and liberty in the name of justice for the Black community. *Id.*; Susan Johnson, *Fannie Lou Hamer: Mississippi Grassroots Organizer*, 2 NAT’L BLACK L.J. 155, 159 (1972). When she tried to vote in 1962, the white owner of the Mississippi plantation where she had worked as a sharecropper for eighteen years fired her, claiming, “We are not ready for that in Mississippi.” Keisha N. Blain, *Fannie Lou Hamer’s Dauntless Fight for Black Americans’ Right To Vote*, SMITHSONIAN MAG. (Aug. 20, 2020), <https://www.smithsonianmag.com/history/fannie-lou-hamers-dauntless-fight-for-black-americans-right-vote-180975610/> [<https://perma.cc/G3AV-9VE2>]. See generally NKECHI TAIFA, RE-ENFRANCHISEMENT! A GUIDE FOR INDIVIDUAL RESTORATION OF VOTING RIGHTS IN STATES THAT PERMANENTLY DISENFRANCHISE FORMER FELONS (2002).

² Mattie Kahn, *The Goddesses of Democracy*, GLAMOUR (Nov. 2, 2021), <https://www.glamour.com/story/georgia-collective-ufot-butler-brown-women-of-year-2021> [<https://perma.cc/9K99-YLMT>].

³ See *infra* Section I.B.

⁴ Linda So & Jason Szep, *Exclusive—Two Election Workers Break Silence After Enduring Trump Backers’ Threats*, REUTERS (Dec. 20, 2021, 6:08 AM), <https://www.reuters.com/article/us-usa-election-threats-georgia-exclusiv-idCAKBN2IP0VZ>; Martin Pengelly, *‘There’s Nowhere I Feel Safe’: Georgia Election Workers on How Trump Upended Their Lives*, GUARDIAN (June 21, 2022, 5:52 PM), <https://www.theguardian.com/us-news/2022/jun/21/january-6-hearings-georgia-elections-workers-mother-daughter-testify> [<https://perma.cc/T4U5-8MLC>] (detailing how then President Donald Trump and his allies

Registration and Elections.⁵ Both women enjoyed the work they had done as election workers. As Moss explained, “I’ve always been told by my grandmother how important it is to vote and how people before me, a lot of people, older people in my family, did not have that right.”⁶ They value the right to vote.

The Select Committee to Investigate the January 6th Attack on the United States Capitol (“January 6th Committee”)⁷ introduced Moss and Freeman to the world on June 21, 2022, when it broadcasted their testimony about the horrors Moss and Freeman endured after the Trump Administration accused them of rigging the November 2020 election. These accusations were false and made without any proof. Rudy Giuliani, a lawyer for then President Donald J. Trump’s campaign, alleged to have seen a “surveillance video from the [State Farm A]rena that he claimed showed the two exchanging USB memory sticks, presumably containing fraudulent vote counts, ‘as if they’re vials of cocaine.’”⁸ Trump described Freeman as a “professional vote scammer and hustler” and attacked both women on a leaked recording of a phone call he had with Georgia Secretary of State Brad Raffensperger, just two days before the January 6th attack.⁹ The work Moss and Freeman did to ensure the fairness of the 2020 election and that Fulton County counted every vote led to death threats, assaults, racist and sexist attacks on their character and the disarray of their lives.¹⁰ They risked their lives while attempting to protect the integrity of the election.¹¹

From before the Women’s Suffrage Movement to present-day voting rights activists,¹² Black women have faced these racialized and gendered caricatures;

“upended [election workers’] lives, fueling harassment and racist threats by claiming they were involved in voter fraud”).

⁵ Moss had been a poll worker for over ten years, but she and her mother quit after the 2020 election. Amy Gardner, *Election Workers Describe ‘Hateful’ Threats After Trump’s False Claims*, WASH. POST (June 21, 2022, 6:40 PM), <https://www.washingtonpost.com/national-security/2022/06/21/ruby-freeman-shaye-moss-jan6-testimony>.

⁶ *Id.*

⁷ *About*, SELECT COMM. TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL, <https://january6th.house.gov/about> [<https://perma.cc/56CQ-K6Y5>] (last visited Dec. 7, 2022).

⁸ Gardner, *supra* note 5.

⁹ *Id.*

¹⁰ See Pengelly, *supra* note 4, at 1-3. Moss and Freeman described people accosting their family members and fearing being in public, staying away from their homes for months, and changing their appearances because of viable threats. *Id.*

¹¹ *Id.*

¹² For example, consider the names of Stacey Abrams—the founder of New Georgia Project (“NGP”) and a 2018 and 2022 Georgia Democratic gubernatorial candidate—and Nsé Ufot—NGP’s former Chief Executive Officer. They have come to represent symbols of inspiration for the power of working to increase voting rights access. Both individuals are Black women who worked with people to register eligible people of color in Georgia. See *About New Georgia Project*, NEW GA. PROJECT (2021), <https://newgeorgiaproject.org/about> [<https://perma.cc/8EXP-QW3T>] (last visited Dec. 7, 2022). During and after the 2020 election and 2021 Georgia Senate run-off elections, communities across the nation praised Abrams and Ufot for leading the effort that registered 800,000 new voters in Georgia and fought

while they pushed for democratic principles and the right to vote for systemically excluded communities, they also battled for voting access for themselves. Unfortunately, “[i]t should not fall to Black women to beat back these antidemocratic measures, but over and over, it’s Black women who step up.”¹³ Because of their consistent efforts, Black women are a powerhouse voting bloc, have been lionized for making huge strides in registering voters, and are one of the most active portions of the United States’ electorate.¹⁴

Commentators have described Black women as the “unsung heroes” of the right to vote.¹⁵ Research has found that “Black women, regardless of location, age, or socioeconomic background, tend to vote for economically thriving, educated, healthy, and safe communities.”¹⁶ Their justice-focused interests

against voter suppression. Danny Hakim, Stephanie Saul & Glenn Thrush, *As Biden Inches Ahead in Georgia, Stacey Abrams Draws Recognition and Praise*, N.Y. TIMES (Oct. 7, 2021), <https://www.nytimes.com/2020/11/06/us/politics/stacey-abrams-georgia.html>. Politicians, celebrities, and people on social media hailed them for defending and saving democracy. See Kahn, *supra* note 2; Mariya Moseley, *Georgia Black Women Leaders on ‘Saving Democracy’ by Helping Flip Senate, Fueling Biden-Harris Win*, ABC NEWS (Jan. 21, 2021, 6:33 PM), <https://abcnews.go.com/Politics/georgia-black-women-leaders-saving-democracy-helping-flip/story?id=75407219> [<https://perma.cc/N47D-PSKE>].

¹³ Kahn, *supra* note 2; see also Barbara Rodriguez, *Black Women Helped Drive Record Early Voting in Georgia. They’re Not Done.*, 19TH (Nov. 7, 2022, 8:59 AM), <https://19thnews.org/2022/11/black-women-organizing-early-voting-georgia> [<https://perma.cc/29GB-4WPA>] (quoting Yterenickia “YT” Bell, senior advisor of voting for the Leadership Conference on Civil and Human Rights, as saying, “Black women have been the backbone of democracy. . . . History shows us that we’ve always been engaged, even if we were not prioritized and our rights were not restored in the same way as others”).

¹⁴ DANYELLE SOLOMON & CONNOR MAXWELL, CTR. FOR AM. PROGRESS, WOMEN OF COLOR: A COLLECTIVE POWERHOUSE IN THE U.S. ELECTORATE 5, 9 (2019), <https://cdn.americanprogress.org/content/uploads/2019/11/18120343/Women-of-Color-in-the-American-Electorate.pdf> [<https://perma.cc/9UEU-2RRW>]; see also Chinyere Ezie, *Not Your Mule? Disrupting the Political Powerlessness of Black Women Voters*, 92 U. COLO. L. REV. 659, 671 (2021).

¹⁵ Jackie Calmes, *Column: The Jan. 6 Hearings Are Sorting Real Heroes from the Fakes*, L.A. TIMES (June 24, 2022, 3:00 AM), <https://www.latimes.com/opinion/story/2022-06-24/january-6-committee-mike-pence-rusty-bowers-donald-trump>. The chair of the January 6th Committee praised a few election officials as the “backbone of our democracy.” Associated Press, *Jan. 6th Panel: Local ‘Heroes’ Rebuffed Trump, Then Faced Threats*, NEWS CHANNEL 9 ABC (June 21, 2022), <https://newschannel9.com/news/local/jan-6th-panel-local-heroes-rebuffed-trump-then-faced-threats> [<https://perma.cc/26LT-VRT3>].

¹⁶ Leah Rodriguez, *Black Women’s Votes Remain in Jeopardy 55 Years After the Voting Rights Act Passed*, GLOB. CITIZEN (Aug. 6, 2020), <https://www.globalcitizen.org/en/content/black-women-helped-pass-voting-rights-act> [<https://perma.cc/A5R2-2KSR>]; see also Megan Bailey, *Between Two Worlds: Black Women and the Fight for Voting Rights*, NAT’L PARK SERV., <https://www.nps.gov/articles/black-women-and-the-fight-for-voting-rights.htm> [<https://perma.cc/FTC4-NTKC>] (last updated Sept. 13, 2022) (noting Black women have worked toward universal suffrage that would benefit all, instead of access to the ballot box for Black people or women).

would protect them and their families, and, also, benefit communities of all demographics.¹⁷ Their votes are efforts to work toward a fair democracy.

Nevertheless, while people across the United States have lauded Black women for saving the country's democracy after elections, they have also failed to prevent the suppression of Black women's votes.¹⁸ So, even though people celebrate the monumental bravery of Moss and Freeman, two Black women focused on protecting everyone's right to vote, states also exclude other Black women from voting or seeking to vote because they have been convicted of a crime.¹⁹ States across the nation ban people with convictions²⁰ from voting, unless they have met certain, often confusing, criteria.²¹ States vary in the procedures people must follow to restore their right to vote.²² Only Vermont, Maine, the District of Columbia, and the Commonwealth of Puerto Rico allow people to vote no matter their criminal history.²³

¹⁷ MARTHA S. JONES, VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL 9 (2020) ("Black women advocated for their interests as people doubly burdened by racism and sexism, and they reasoned that when society lifted them up as equals, everyone would rise.").

¹⁸ Catherine Powell & Camille Gear Rich, *The "Welfare Queen" Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Coalitions*, 108 GEO. L.J. 105, 121-25 (2020) (discussing how racialized "welfare queen" trope has led to targeting Black women for voter fraud).

¹⁹ See *id.*

²⁰ In recognition of the importance of using less stigmatizing language, I use people-first language when referring to people who are incarcerated and who have criminal records. As such, I will refer to "people with convictions," instead of "convicts, former prisoners, or felons." See EDDIE ELLIS, CTR. FOR LEADERSHIP ON URB. SOLS., AN OPEN LETTER TO OUR FRIENDS ON THE QUESTION OF LANGUAGE 2 (2007); *Preferred Terms for Select Population Groups & Communities*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/healthcommunication/Preferred_Terms.html [<https://perma.cc/KV7G-3CML>] (last visited Dec. 7, 2022) ("Language in communication products should reflect and speak to the needs of people in the audience of focus . . . [and] these terms attempt to represent an ongoing shift toward non-stigmatizing language."); Alice Ristroph, *Farewell to the Felony*, 53 HARV. C.R.-C.L. L. REV. 563, 617 (2018) ("Felon is one of several concepts in American criminal law that helps produce and perpetuate its distinctive severity and its profound racial and economic inequalities.").

²¹ *50-State Comparison: Loss & Restoration of Civil/Firearms Rights*, COLLATERAL CONSEQUENCES RES. CTR.: RESTORATION OF RTS. PROJECT (Dec. 2021) [hereinafter *50-State Comparison*], <https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges> [<https://perma.cc/CRX3-Y6B8>]. Though people with criminal convictions face countless barriers, most states deprive people of their civil rights to vote, hold public office, serve on a jury, and serve as a notary public upon conviction. GILDA R. DANIELS, UNCOUNTED: THE CRISIS OF VOTER SUPPRESSION IN AMERICA 153 (2020).

²² *50-State Comparison*, *supra* note 21.

²³ *Id.* Critically, neither the District of Columbia nor Puerto Rico are states and, as a result, they have limited voting power themselves. See *DC and Puerto Rico Statehood—Top 3 Pros and Cons*, BRITANNICA: PROCON.ORG, <https://www.procon.org/headlines/dc-and-puerto-rico-statehood> [<https://perma.cc/4AL4-CUQK>] (last updated Apr. 21, 2022).

Although the literature uses the term “felony disenfranchisement,”²⁴ the disenfranchisement maze people must follow to regain or restore their voting rights amounts to voter suppression.²⁵ States may authorize the automatic restoration of a person’s voting rights, an application after a waiting period, or permanent disenfranchisement.²⁶ A person may be eligible to vote immediately after they are released from prison, after completion of post-release conditions related to probation or community supervision, after paying their legal financial obligations (“LFOs”),²⁷ or not at all.²⁸ These disenfranchisement mazes vary

²⁴ Select states ban people from voting if they are convicted of a misdemeanor. *See DC and Puerto Rico Statehood—Top 3 Pros and Cons*, *supra* note 23; *see also* Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55, 59 n.12 (2019). As such, I will not use “felony” when discussing voter disenfranchisement in recognition of this discriminatory practice’s reach. *See* JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY*, at vii (2006) (“[W]e use the phrase ‘disenfranchisement’ to describe the loss of voting rights [arising from a conviction]. This usage is predominant in the contemporary scholarly and journalistic literature. However, in the extensive nineteenth-century debates over the extension or contraction of the franchise, ‘disfranchisement’ was the sole word used to describe the loss of voting rights, and most historians still employ that word today. Most dictionaries consider the two words identical.”). To be clearer about the aim and result of these laws, I will use “voter suppression” in this Article, instead of “disenfranchisement.” In doing so, I stress the use of these laws and policies to keep people from accessing their right to vote.

²⁵ *See* ERIKA WOOD & RACHEL BLOOM, ACLU & BRENNAN CTR. FOR JUST., *DE FACTO DISENFRANCHISEMENT* 8-9 (2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/09.08.DeFacto.Disenfranchisement.pdf> [<https://perma.cc/6D2L-L4A6>] (attributing causes of disenfranchisement maze to complicated, incomprehensible laws expecting officials with no criminal law expertise to administer and explain these laws; disconnect between election officials and criminal legal system officials, etc.). As an example, take the convoluted voting rights restrictions and restoration process in Tennessee, where the years people were convicted and the type of crimes dictate their voting eligibility. *Restoration of Voting Rights*, TENN. SEC’Y OF ST., <https://sos.tn.gov/elections/guides/restoration-of-voting-rights> [<https://perma.cc/9G92-VU3W>] (last visited Dec. 7, 2022). People convicted before January 15, 1973, can vote, unless they were convicted of particular offenses. *Id.* People with convictions between January 15, 1973, and May 17, 1981, may vote in elections. *Id.* Tennessee allows people convicted on or after May 18, 1981, to vote only after they have completed their sentence and have had their rights restored or their felony convictions expunged, though people convicted of certain crimes are barred from voting for life. *Id.* Further, individuals must have paid any court costs, unless a court finds them unable to pay; have finished paying any restitution obligations imposed by the court; and be current on their child support payments before they may submit a certificate signed by authorized government officials indicating they are eligible to vote. TENN. CODE ANN. § 40-29-202(b)-(c) (2021).

²⁶ *50-State Comparison*, *supra* note 21.

²⁷ LFOs include all court-imposed fines, fees, and restitution associated with a person’s criminal charge and conviction. *See* Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN. ST. L. REV. 349, 378-80 (2012) (explaining different types and sources of these criminal legal debts).

²⁸ *50-State Comparison*, *supra* note 21.

across the United States, but they all amount to disenfranchisement by geography.²⁹

In some cases, the voting restrictions themselves lead to more potential criminal liability. Prosecutors criminally charge Black women who were once convicted of a crime that caused them to lose their voting rights, who then unintentionally and unknowingly misstep by registering to vote or voting while ineligible. Crystal Mason³⁰ and Pamela Moses³¹ are two Black women who were convicted, respectively, for submitting a provisional ballot in Texas and trying to register to vote in Tennessee while ineligible within their states' disenfranchisement maze. Their arrests and convictions went viral across the nation, offering further cause to call for reform. Meanwhile, these women suffered the consequences of these additional injustices, including being incarcerated and being separated from family, simply for trying to navigate society's constructed barriers.³²

Over the last forty years, the rate of incarceration of women has increased exponentially, but Black women are represented disproportionately in courtrooms, jails, and prisons.³³ Given the disturbing rate of conviction and incarceration³⁴ of all women in the United States, but especially Black women,³⁵

²⁹ Because each state and jurisdiction has its own laws and procedures for restoring the right to vote after conviction and incarceration, Black women may be able to register to vote in one state and be barred from voting in another state. See *Can People Convicted of a Felony Vote? Felony Voting Laws by State*, BRENNAN CTR. FOR JUST. [hereinafter *Can People Convicted of a Felony Vote?*], <https://www.brennancenter.org/our-work/research-reports/can-people-convicted-felony-vote-felony-voting-laws-state> [https://perma.cc/SPU7-B4GM] (last updated Sept. 26, 2022).

³⁰ Crystal Mason was arrested and convicted in Texas for submitting a provisional ballot because she was ineligible to vote. In May 2022, the Texas Criminal Court of Appeals reversed and sent Mason's case back to the appellate court to reconsider its holding. Barbara Rodriguez, *States Are Stepping up Prosecutions for Voter Fraud. But Who Gets the Harshes Punishment?*, 19TH (Oct. 6, 2022, 6:00 AM), <https://19thnews.org/2022/10/state-election-voter-fraud-prosecutions-harsh-sentences> [https://perma.cc/GDB8-ESYE].

³¹ Pamela Moses was arrested, convicted, and sentenced for registering to vote while ineligible in Tennessee. Eventually, the court granted her a new trial and the prosecutor dismissed the charges. Sam Levine, *The Untold Story of How a US Woman Was Sentenced to Six Years for Voting*, Guardian (Dec. 27, 2022, 2:00 AM), <https://www.theguardian.com/us-news/2022/dec/27/pamela-moses-voting-rights-mistake-jail> [https://perma.cc/TU4Z-EWLA]. For a summary of the disenfranchisement maze that people in Tennessee must navigate, see *supra* note 25.

³² For further discussion of some of the extensive consequences women must navigate, see Carla Laroche, *The New Jim and Jane Crow Intersect: Challenges to Defending the Parental Rights of Mothers During Incarceration*, 12 COLUM. J. RACE & L. 517, 532-548 (2022).

³³ *Id.* at 8-11.

³⁴ In this Article, I use the term "incarceration" to describe confinement in local, state, federal, Native American, and military jail or prison facilities.

³⁵ See SENT'G PROJECT, INCARCERATED WOMEN AND GIRLS 1 (2022) [hereinafter SENT'G PROJECT, INCARCERATED WOMEN AND GIRLS], <https://www.sentencingproject.org/app/uploads/2022/11/Incarcerated-Women-and-Girls.pdf> [https://perma.cc/3ESS-FXT3] (noting

this disenfranchisement serves to undermine Black women's voting access. Although the act of voting is supposed to express people's political citizenship, their hopes for their community and country, and their level of satisfaction with their elected officials' actions, Black women have been left out of this powerful undertaking; their votes are suppressed through the disenfranchisement maze.³⁶

Part I of this Article explores the challenges Black women, in particular, have faced when trying to access the right to vote because of their intersectional—race and gender—identities and the value voting has within the United States.³⁷ It describes how voting disenfranchisement, a legacy of racist Jim Crow and sexist Jane Crow³⁸ policies and behaviors operate, and how mass incarceration has intersected with gender and race to heighten Black women's ban from the ballot box. Part II analyzes the history of voter suppression because of criminal convictions in Florida and how two Black women, Rosemary McCoy and Sheila

there were five times as many women who were incarcerated in 2020 than in 1980 and growth rate of incarceration of women is twice that of men during that same period); Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Oct. 29, 2019), <https://www.prisonpolicy.org/reports/pie2019women.html> [<https://perma.cc/CMR2-XH7Y>]. Because jails and prisons usually place people in a facility based on the sex assigned to them at birth, rather than their gender identity, incarceration data does not account for transgender women placed in male facilities. See *Transgender Incarcerated People in Crisis*, LAMBDA LEGAL, <https://www.lambdalegal.org/know-your-rights/article/trans-incarcerated-people> [<https://perma.cc/WXF3-YBPE>] (last visited Dec. 7, 2022); *Transgender Woman Continues Fight for Transfer from Male Prison Where She Faces Repeated Sexual Assault*, CTR. FOR CONST. RTS. (Feb. 23, 2022), <https://ccrjustice.org/home/press-center/press-releases/transgender-woman-continues-fight-transfer-male-prison-where-she> [<https://perma.cc/Y5XG-ZKZH>]; Jaclyn Diaz, *Minnesota Recognizes She's a Woman. She's Locked in a Men's Prison Anyway*, NPR (Oct. 13, 2022, 6:07 AM), <https://www.npr.org/2022/10/04/1126801351/trans-rights-transgender-inmates> [<https://perma.cc/76WM-FKPM>].

³⁶ See *infra* Section III.A.

³⁷ Although this Article focuses on Black women, the United States has deliberately excluded other women of color from the ballot box. See generally Carliss Chatman, Citizens United v. Federal Election Commission *Rewritten*, in *FEMINIST JUDGMENTS: CORPORATE LAW REWRITTEN* (forthcoming 2022) (manuscript at 20-22) (on file with author); Patty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, 47 ARIZ. ST. L.J. 1099 (2015) (detailing decades of voter suppression of American Indians). Therefore, while this Article shows the continued threat of voter suppression Black women endure, it does not seek to minimize the plentiful consequences all those who must navigate discriminatory voter laws endure. Highlighting Black women's role in dismantling voter exclusion should not be read as a diminishment of any other group's role in doing so as well.

³⁸ Pauli Murray used the term "Jane Crow" to signify the prejudice Black women faced because of their race and gender. See generally Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965); Lisa A. Crooms-Robinson, *Murdering Crows: Pauli Murray, Intersectionality, and Black Freedom*, 79 WASH. & LEE L. REV. 1093, 1095-99 (2022); *Jane Crow & the Story of Pauli Murray*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/blog-post/jane-crow-story-pauli-murray> [<https://perma.cc/EE2A-9VFG>] (last visited Dec. 7, 2022).

Singleton, have served as critical advocates in the push to recognize the marginalization of women of color within the disenfranchisement maze.³⁹ Part III examines the negative consequences these voter suppression schemes have on Black women and their families and communities and explains why these disenfranchisement mazes lead to the elevation of the interests of white communities.

Part IV offers ways that advocates can demand the implementation of laws and policies that give Black women with criminal convictions the full right to vote, including abolishing these voter suppression laws. Should policymakers and voters refuse to do so, people will continue to disregard Black women's inability to access their voting rights, knowingly, and racism and sexism will continue to dictate who has political power, as they always have throughout U.S. history. In 1795, political theorist Thomas Paine wrote, "[T]o take away [the right to vote] is to reduce a [person] to a state of slavery, for slavery consists in being subject to the will of another."⁴⁰ Accordingly, a just, free, and democratic society requires ensuring that Black women, including those with criminal convictions, have input in our government; without their perspective, their intersectional experiences will continue to be disregarded.⁴¹

³⁹ This Article reflects my own views formed through my prior experience as a lawyer, clinical professor, and volunteer working on these issues in Florida. Through these endeavors, I collaborated with inspiring individuals, including Dr. Jessica Younts of Justice Impact Alliance and Cecile Scoon of the League of Women Voters of Florida.

⁴⁰ Appellants' Brief at 1, *McCoy v. Governor of Florida*, No. 20-12304 (11th Cir. Oct. 21, 2020) (alterations in original) (quoting THOMAS PAINE, DISSERTATIONS ON FIRST PRINCIPLES OF GOVERNMENT 19 (Gale ECCO, Print Eds. 2018) (1795)).

⁴¹ See Press Release, *New Higher Heights Poll: Black Women Highly Motivated To Vote, But Desire More Representation & Change on Multiple Issues*, #BLACKWOMENVOTE (Oct. 17, 2022), <https://blackwomenvote.com/new-higher-heights-poll-black-women-highly-motivated-to-vote-but-desire-more-representation-change-on-multiple-issues> [https://perma.cc/W2VR-N9B4] (quoting Glynda Carr, President & Chief Executive Officer of Higher Heights: "A multitude of issues are of deep concern to our community. . . . Black women are not single issue voters—we sit at the intersection of the most pressing issues facing our nation"); Cat Zakrzewski, *Women of Color Running for Office Face Higher Rates of Violent Threats Online*, WASH. POST (Oct. 27, 2022, 9:06 AM), <https://www.washingtonpost.com/politics/2022/10/27/women-color-running-office-face-higher-rates-violent-threats-online>.

What will the negro woman do with the vote? . . . [W]e will stand by the white women. . . . We are interested in the same moral uplift of the community in which we live as you are. We are asking only one thing: a square deal. . . . We want recognition in all forms of this government.

—Juno Frankie Pierce⁴²

I. BLACK WOMEN'S INTERSECTIONAL VOTING STRUGGLES IN
CONTEXT

This Part reflects on the critical importance of the right to vote and on the history of Black women regarding the right to vote. When Juno Frankie Pierce stood before the participants at the 1920 Tennessee Suffrage Convention,⁴³ she was the only Black woman invited to speak. In this inaugural meeting of the League of Women Voters of Tennessee in May 1920, members discussed Tennesseans' need to pass the Nineteenth Amendment, which stated, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."⁴⁴ Because a sufficient number of other state legislatures and the U.S. Congress had already ratified the Nineteenth Amendment, if the Tennessee legislature passed this Amendment when it planned to meet in August 1920, women would have the right to vote under the Constitution.⁴⁵

Appreciating the importance of her presence for Black women, Pierce's words, quoted above, highlighted Black women's critical work in the Suffrage Movement and the need for Black women to finally be recognized as full participants in the democratic process. Born during, or shortly after, the Civil War to a mother who was enslaved, Pierce grew up in the Jim Crow era,⁴⁶ a period of government-sanctioned terror and discrimination by white people

⁴² *Biographical Sketch of Juno Frankie Pierce*, ALEXANDER ST. (2019), https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4384807/biographical-sketch-juno-frankie-pierce [<https://perma.cc/5MW9-UCGG>].

⁴³ Jessica Bliss, *New Nashville Park To Be Named for Influential African American Women's Suffrage Leader Frankie Pierce*, TENNESSEAN (Nov. 13, 2019, 12:55 PM), <https://www.tennessean.com/story/news/2019/11/13/frankie-pierce-park-nashville-suffrage-leader-honored/2534066001/> [<https://perma.cc/JQR8-NBS4>].

⁴⁴ U.S. CONST. amend. XIX.

⁴⁵ *Tennessee and the 19th Amendment*, NAT'L PARK SERV. (July 31, 2020), <https://www.nps.gov/articles/tennessee-women-s-history.htm> [<https://perma.cc/JFR6-84N9>]. Women in certain states could vote prior to the Nineteenth Amendment's ratification to the Constitution. Notably, other countries had granted some women the right to vote years, if not decades, earlier. New Zealand, for example, granted "all women citizens" voting rights in 1893, and Australia "allowed non-Indigenous women in all states to vote" and run for office in 1902. *Women's Suffrage*, NAT'L LIB. AUSTL., <https://www.nla.gov.au/digital-classroom/senior-secondary/shoulder-shoulder-feminism-australia/womens-suffrage> [<https://perma.cc/2GR5-LXVF>] (last visited Dec. 7, 2022).

⁴⁶ See Carole Stanford Bucy, *Juno Frankie Pierce*, TENN. ENCYC., <https://tennesseeencyclopedia.net/entries/juno-frankie-pierce> [<https://perma.cc/Y5VB-CTFQ>] (last updated Mar. 1, 2018).

against Black families.⁴⁷ Living during that period, Pierce would have witnessed how the purported freedom and the right to vote were meaningless without opportunities to access and enforce those rights fully.⁴⁸

In her demand for a square deal, Pierce's words embodied what Black women in the United States before and after her endured: sacrifice while seeking political citizenship in a society steeped in racism and sexism.⁴⁹ In trying to connect with the white women in the room, Pierce promised a continued alliance once the Nineteenth Amendment passed. Through her request, she sought to avoid a future of exclusion and disrespect of Black women.

Three months after Pierce's remarks, in August 1920, a Tennessee legislature made up of white men convened to decide whether to pass the Nineteenth Amendment allowing women the right to vote.⁵⁰ After heated discussions, the Tennessee legislature passed the Amendment.⁵¹ Because Tennessee became the 36th state to pass the Nineteenth Amendment, women could celebrate their right to vote under the Constitution.⁵² A victory for so many.⁵³

Unfortunately, Pierce's demand for a square deal for Black women has never come to fruition. This Part explains how society's views of Black women engendered laws and policies that discriminated against Black women. It applies an intersectional framework to prove that Black women's race and gender have intersected to elevate unique harms to their access to the ballot box throughout U.S. history and illustrates how Jim Crow era laws and policies continue to do so today.

⁴⁷ See Angela Behrens, Christopher Uggen & Jeff Manza, *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOCIO. 559, 561 (2003) ("[V]iolent suppression of the [B]lack vote during Reconstruction combined with weak federal enforcement thereafter, and the eventual adoption of a variety of disenfranchising measures by Southern states after 1890, prevented most African-Americans from voting in the South.").

⁴⁸ See *id.* at 560-62.

⁴⁹ See Kahn, *supra* note 2 (noting lead Black women have taken in voting rights advocacy). See generally JONES, *supra* note 17 (detailing stories of Black women who sacrificed to obtain political and social rights).

⁵⁰ *Woman Suffrage and the 19th Amendment*, NAT'L ARCHIVES (June 2, 2021), <https://www.archives.gov/education/lessons/woman-suffrage> [https://perma.cc/QDH7-Z96R].

⁵¹ *Id.* ("[T]hose against the amendment managed to delay official ratification. Anti-suffrage legislators fled the state to avoid a quorum, and their associates held massive anti-suffrage rallies and attempted to convince pro-suffrage legislators to oppose ratification. However, Tennessee reaffirmed its vote and delivered the crucial 36th ratification necessary for final adoption.").

⁵² *Tennessee and the 19th Amendment*, *supra* note 45.

⁵³ *Woman Suffrage and the 19th Amendment*, *supra* note 50 (asserting "face of the American electorate had changed forever").

A. *Race and Gender: The Intersectionality of Black Women*

Even though Black women like Pierce have pushed for democratic principles and the full right to vote for systemically excluded communities, they have yet to succeed for themselves.⁵⁴ The racial and gender identity of Black women in the United States has meant that when Black men and white women gained, Black women were left behind.⁵⁵ Society has yet to deem Black women worthy of consideration and justice.⁵⁶

Scholars have analyzed and described the discrimination Black women face when elevating their desire for support within the United States.⁵⁷ In her seminal book, *Ain't I a Woman: Black Women and Feminism*, bell hooks explained:

Usually when people talk about the “strength” of [B]lack women they are referring to the way in which they perceive [B]lack women coping with oppression. They ignore the reality that to be strong in the face of oppression is not the same as overcoming oppression, that endurance is not to be confused with transformation.⁵⁸

That endurance in the face of degradation appears in different forms. While observing their enduring strength, society also imposes racist and sexist tropes on to Black women.⁵⁹ For example, “welfare queen” is a term to describe Black women as lazy and immoral; they are “poor Black single mothers deemed . . . the agents of their own misfortune due to their unmarried status—assumed to indicate loose morals, hypersexuality, and presumed laziness.”⁶⁰

⁵⁴ See Errin Haines, *In Tulsa and Beyond, Biden Tasks Black Women with Fighting the Legacy of Inequity*, 19TH (June 1, 2021, 8:46 PM), <https://19thnews.org/2021/06/at-tulsa-and-beyond-biden-tasks-black-women-with-fighting-the-legacy-of-inequity/> [https://perma.cc/SM58-YC8J] (“‘When you’re a Black woman and you have this kind of responsibility, the stakes are always high,’ [Leah] Daughtry[, a Democratic strategist] said. ‘We carry the weight of history, of our ancestors and our future on our shoulders, and we are critically aware that we have to succeed because if we don’t, there may not be another.’”).

⁵⁵ See George Yancy, *Black Womanist Theology Offers Hope in the Face of White Supremacy*, TRUTHOUT (June 19, 2021), <https://truthout.org/articles/black-womanist-theology-offers-hope-in-the-face-of-white-supremacy> [https://perma.cc/XWQ9-LU87].

⁵⁶ See *id.* (“Black women’s pain and suffering has become virtually invisible within the wider social discourse, protest movements and collective social consciousness.”).

⁵⁷ *Id.*; Powell & Rich, *supra* note 18, at 120-25.

⁵⁸ BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 6 (1981).

⁵⁹ Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2021-30 (2017).

⁶⁰ Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 237 (2014) (citation omitted); see also Marilyn Yarbrough & Crystal Bennet, *Cassandra and the “Sistahs”: The Peculiar Treatment of African Women in the Myth of Women as Liars*, 3 J. GENDER RACE & JUST. 625, 636-39 (2000) (summarizing “jezebel” and “welfare queen” myths).

These caricatures offer the government and others gatekeepers of resources excuses to not support Black women's and girls' needs.⁶¹ For example, in the decade preceding 2014, philanthropic funders spent more than \$100 million to support dropout prevention and mentoring initiatives for Black and brown boys, compared to only \$1 million targeting Black and brown girls.⁶² And Black women-led voting rights organizations, in particular, and women-of-color-led civic organizations overall, are under-resourced.⁶³ According to the Federal Reserve, Black people generally own considerably less wealth than white people. Comparing the household wealth in the United States by race, white communities own 82.9% of household wealth to Black communities' mere 4.6%.⁶⁴ Further, the income of Black women is considerably less than that of white men.⁶⁵ According to the African American Policy Forum, a think tank dedicated to justice, equality, and human rights for all, "Black men have approximately 79x the wealth of Black women; white women have approximately 415x the wealth of Black women; and white men have approximately 438x the wealth of Black women."⁶⁶ On too many fronts, Black women are left behind.⁶⁷

⁶¹ Powell & Rich, *supra* note 18, at 117-19.

⁶² AFR. AM. POL'Y F., DID YOU KNOW?: THE PLIGHT OF BLACK GIRLS & WOMEN IN AMERICA 1 (2014) [hereinafter THE PLIGHT OF BLACK GIRLS AND WOMEN], https://www.aapf.org/_files/ugd/62e126_54d4f5a4634047fe894ec2db240cb487.pdf [<https://perma.cc/JD7T-DWRH>].

⁶³ See Yordanos Eyoel & Aimee Allison, Opinion, *Women of Color: The Undercapitalized Warriors of American Democracy*, HILL: CONG. BLOG (Aug. 12, 2021, 11:00 AM), <https://thehill.com/blogs/congress-blog/politics/567540-women-of-color-the-undercapitalized-warriors-of-american> [<https://perma.cc/6F8E-NTDZ>]; Sarah C. Haan, *Shareholder Proposal Settlements and the Private Ordering of Public Elections*, 126 YALE L.J. 262, 342-43 (2016).

⁶⁴ *Distribution of Household Wealth in the U.S. Since 1989*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/table/#quarter:131;series:Net%20worth;demographic:race;population:all;units:shares> [<https://perma.cc/MGD5-JX6T>] (last updated Sept. 23, 2022). Also, the chart notes that the "Hispanic" community, as labeled by the Federal Reserve, owns 2.9% of the household wealth in the United States and "Other" races/ethnicities own 9.6% as of the second quarter of 2022. *Id.* Black people make up about 13% of the U.S. population, to white people's 72%. See 2019: ACS 1-Year Supplemental Estimates: Race, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=race&tid=ACSSSE2019.K200201> [<https://perma.cc/UM3N-SZEH>] (last visited Dec. 7, 2022).

⁶⁵ See Chandra Childers, Ariane Hegewisch & Eve Mefferd, *Shortchanged and Underpaid: Black Women and the Pay Gap*, INST. FOR WOMEN'S POL'Y RSCH. (July 27, 2021), <https://iwpr.org/iwpr-publications/fact-sheet/shortchanged-and-underpaid-black-women-and-the-pay-gap> [<https://perma.cc/56ZD-4HBG>] (noting "it will take Black women more than another hundred years—until 2133—to reach pay equity with [w]hite men").

⁶⁶ THE PLIGHT OF BLACK GIRLS AND WOMEN, *supra* note 62, at 1.

⁶⁷ See HOOKS, *supra* note 58, at 7 ("No one bothered to discuss the way in which sexism operated both independently of and simultaneously with racism to oppress [Black women].").

To address and name the ever-present devaluation of their personhood, Black women scholars and activists have developed and expressed the concept and terminology of intersectionality. Kimberlé Crenshaw coined the term *intersectionality* in her foundational piece, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*.⁶⁸ In reviewing the experience of Black women and appreciating the Black women scholars who came before her,⁶⁹ Crenshaw defined intersectionality as:

[A] lens through which you can see where power comes and collides, where it interlocks and intersects. It's not simply that there's a race problem here, a gender problem here, and a class or LBGTQ problem there. Many times that framework erases what happens to people who are subject to all of these things.⁷⁰

Crenshaw addressed the need to fill in the gap that white men and white women ignored. Crenshaw emphasized “the historical fact that intersectionality was developed by [B]lack women activists and intellectuals *against* white-dominated feminism, as much as against the male-dominated [B]lack liberation movement, against capitalism and heterosexism.”⁷¹

Black feminist scholars and others have explored the intersectionality doctrine by analyzing the experience of Black women in the United States.⁷² Scholars have since expanded intersectionality to other people with marginalized identities and applications.⁷³ For example, Johanna Bond recently researched and published a book on the origins and foundation of the intersectionality framework and applied it to human rights laws and systems.⁷⁴

⁶⁸ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 150 (amplifying how people have “treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks”).

⁶⁹ For a review and history of Black women scholars and activists who spoke and wrote on the need to recognize Black women in the law and society, see JOHANNA BOND, *GLOBAL INTERSECTIONALITY AND CONTEMPORARY HUMAN RIGHTS* 6-14 (2021).

⁷⁰ Kimberlé Crenshaw on *Intersectionality, More than Two Decades Later*, COLUM. L. SCH. (June 8, 2017), <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> [<https://perma.cc/78CL-NWTG>].

⁷¹ JENNIFER C. NASH, *BLACK FEMINISM REIMAGINED: AFTER INTERSECTIONALITY* 40 (2019).

⁷² See Crenshaw, *supra* note 68, at 141-50; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1252 (1991).

⁷³ See BOND, *supra* note 69, at 20; Alice Abrokwa, “*When They Enter, We All Enter*”: *Opening the Door to Intersectional Discrimination Claims Based on Race and Disability*, 24 MICH. J. RACE & L. 15, 17 (2018) (acknowledging growing “recognition in our public discourse of other important intersections at which people may experience discrimination, including the intersection of race and disability”).

⁷⁴ BOND, *supra* note 69, at 20.

The intersectionality framework is valuable because Black women are not a monolith; we experience the world differently, with numerous perspectives and priorities. Black women of different sexual identities, religious views, socioeconomic statuses, educational attainments, and immigration statuses, among other intersectional identities, encounter different challenges and privileges.⁷⁵ Nevertheless, the intersection of one's race and gender "so profoundly affects the way one is treated, so radically shapes what one is allowed to think and feel about this society, that the decision to generalize from such a division is valid."⁷⁶

B. *Historical Voting Exclusion for Black Women*

Delving deeper into U.S. history and politics shows how Black women, in particular,⁷⁷ continued to face unique harms because of their race and gender, even while working with Black men and white women to gain universal access to the ballot box.⁷⁸ Courts have made clear how important the right to vote is to the exercise of citizenship and civic engagement.⁷⁹ Scholars have described how a healthy democracy should receive input from all its people through the ballot box; political participation in a democracy should be a well-respected foundational value.⁸⁰ Yet, policymakers and the judiciary have ignored or actively suppressed Black women's right to vote, notwithstanding their efforts to access the ballot box.⁸¹ This subsection summarizes how the legacy of Jim

⁷⁵ See *id.* at 18-20.

⁷⁶ PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 256 (1991); see also Janay Kingsberry, *For Black Women, Stacey Abrams's Loss 'Feels Like a Punch in the Gut,'* WASH. POST (Nov. 9, 2022, 5:04 PM), <https://www.washingtonpost.com/lifestyle/2022/11/09/stacey-abrams-georgia-black-women> (quoting Atlanta attorney Kristyn Hardy: "And not only do we have one strike against us that we're Black . . . we're also a part of a second marginalized group because we're women. And so it always seems like we're getting the short end of the stick").

⁷⁷ Jones & Norwood, *supra* note 59, 2026-30.

⁷⁸ See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-87 (1990).

⁷⁹ *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) ("[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."); *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex. 2011) ("The right to vote is fundamental, as it preserves all other rights.").

⁸⁰ Malia Brink, *Fines, Fees, and the Right To Vote*, HUM. RTS., Jan. 2020, at 12, 12 ("Voting is the core right of a democracy—the way in which the voice of each citizen finds its way into government."); see also Christopher Munsey, *Why Do We Vote?*, AM. PSYCH. ASS'N (June 2008), <https://www.apa.org/monitor/2008/06/vote> [<https://perma.cc/L7W8-F9N2>] (categorizing different scholars that have investigated why people vote).

⁸¹ See Patricia A. Broussard, *Unbowed, Unbroken, and Unsung: The Unrecognized Contributions of African American Women in Social Movements, Politics, and the Maintenance of Democracy*, 25 WM. & MARY J. RACE GENDER & SOC. JUST. 631, 669 (2019).

Crow's voter suppression continues through mass incarceration and the disenfranchisement maze.⁸²

The combination of the Fifteenth Amendment of the Constitution, which was ratified in 1870 and gave Black men the right to vote,⁸³ and the Nineteenth Amendment, which outlawed policies that regulated voting based on gender,⁸⁴ should have given Black women access to the ballot box.

As The Very Reverend Dr. Kelly Brown Douglas explained in a 2021 interview:

On the one hand, white women have fought to eliminate gender requirements while on the other hand Black men fought to eliminate racial requirements and thus gain the patriarchal privilege to vote. Neither took into account that without the elimination of both racial and gendered restrictions, Black women would still be disenfranchised.⁸⁵

The exclusion of Black women from the ballot box is not a new development.⁸⁶ Since the nation's establishment, Black women have been denied the right to vote.⁸⁷ Starting with the decree that Black people represented only three-fifths of a person in the original Constitution, the nation's laws have worked against their access to the ballot box.⁸⁸ Danielle Conway explained, "Black women are indispensable to the telling of America's attempts to build a nation; as well, these women are equally important in measuring the success of social and political movements for universal suffrage and the achievement of democratic ideals."⁸⁹

⁸² See Jeffrey Robinson, *The Racist Roots of Denying Incarcerated People Their Right To Vote*, AM. C.L. UNION (May 3, 2019), <https://www.aclu.org/blog/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote> [<https://perma.cc/Q6A8-82UL>].

⁸³ U.S. CONST. amend. XV. White women suffragist leaders Elizabeth Cady Stanton and Susan B. Anthony opposed the Fourteenth and Fifteenth Amendments to the Constitution. They felt offended that the white men who could vote chose to give Black men the right to vote over white women. See *Why the Women's Rights Movement Split over the 15th Amendment*, NAT'L PARK SERV., <https://www.nps.gov/articles/000/why-the-women-s-rights-movement-split-over-the-15th-amendment.htm> [<https://perma.cc/G23S-ARFB>] (last updated Jan. 14, 2021) (analyzing Stanton and Anthony's active campaign against the Fifteenth Amendment, and quoting Anthony's response after Frederick Douglass called Stanton racist and offensive: "[I]f you will not give the whole loaf of suffrage to the entire people, give it to the most intelligent first. If intelligence, justice, and morality are to have precedence in the government, let the question of women brought up first and that of the negro last.").

⁸⁴ U.S. CONST. amend. XIX.

⁸⁵ Yancy, *supra* note 55.

⁸⁶ Mae C. Quinn, *Black Women and Girls and the Twenty-Sixth Amendment: Constitutional Connections, Activist Intersections, and the First Wave Youth Suffrage Movement*, 43 SEATTLE U. L. REV. 1237, 1242-43 (2020) (summarizing progression of age and race of people eligible to vote).

⁸⁷ U.S. CONST. art. I, § 2; Quinn, *supra* note 86, at 1242-43.

⁸⁸ See Quinn, *supra* note 86, at 1242-43.

⁸⁹ Danielle Conway, *Black Women's Suffrage, the Nineteenth Amendment, and the Duality of a Movement*, 13 ALA. C.R. & C.L. L. REV. 1, 60 (2021).

In these contexts, Black women have pushed for the right to vote, even when other people did not appreciate their work.⁹⁰

The history of the Nineteenth Amendment captures only one period of the ongoing struggle that Black women face to experience complete suffrage.⁹¹ Nonetheless, Black women worked towards the Nineteenth Amendment's ratification.⁹² Civil and voting rights activists like Ida B. Wells-Barnett,⁹³ Sojourner Truth,⁹⁴ and Josephine St. Pierre Ruffin⁹⁵ worked for women's right

⁹⁰ See Char Adams & Bracey Harris, *Black Women in the South Have Been Bracing for Roe's Fall for Decades*, NBC NEWS (May 7, 2022, 9:00 AM), <https://www.nbcnews.com/news/nbcblk/black-women-south-bracing-roes-fall-decades-rcna27097> [https://perma.cc/FC6L-BBEM] (reporting on statements made by cofounder of abortion rights nonprofit, Michelle Colon, who observed: "When you look at movements in this country, Black and brown women have always been a part of them").

⁹¹ See ROSALYN TERBORG-PENN, *AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850-1920*, at 7-12 (1998); JONES, *supra* note 17, at 122; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-87 (1990) (citations omitted) ("In the first wave of the feminist movement, [B]lack women's realization that the white leaders of the suffrage movement intended to take neither issues of racial oppression nor [B]lack women themselves seriously was instrumental in destroying or preventing political alliances between [B]lack and white women within the movement. In the second wave, [B]lack women are again speaking loudly and persistently, and at many levels our voices have begun to be heard. Feminists have adopted the notion of multiple consciousness as appropriate to describe a world in which people are not oppressed only or primarily on the basis of gender, but on the bases of race, class, sexual orientation, and other categories in inextricable webs.").

⁹² Serena Mayeri, *After Suffrage: The Unfinished Business of Feminist Legal Advocacy*, 129 YALE L.J.F. 512, 515 (2020).

⁹³ Ida B. Wells-Barnett was a fierce civil rights advocate and social justice leader. She documented the lynchings that occurred in the United States as a journalist, worked to achieve the right to vote for all, and cofounded the NAACP. See Alice Janigro, *Ida B. Wells, SUFFRAGE100MA*, <https://suffrage100ma.org/resources/featured-suffragist/ida-b-wells> [https://perma.cc/WX5H-CJGR] (last visited Dec. 7, 2022); Caitlin Dickerson, *Overlooked—Ida B. Wells: 1862-1931*, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/interactive/2018/obituaries/overlooked-ida-b-wells.html> (publishing belated obituary for Wells-Barnett); Jessica Bliss & Jasmine Vaughn-Hall, *'Brilliant and Politically Savvy: The Roles of African American Women in the Fight To Vote 100 Years Ago*, USA TODAY: LIFE (Aug. 16, 2020, 9:53 PM), <https://www.usatoday.com/in-depth/life/womenofthecentury/2020/02/26/african-american-womens-brilliant-role-19th-amendment-fight-vote/4544377002> [https://perma.cc/GDW8-FEBN].

⁹⁴ Sojourner Truth was born enslaved in New York, but, once no longer enslaved, she traveled the country speaking against slavery and in support of enfranchising Black women. Lolita Buckner Inniss, *While the Water is Stirring: Sojourner Truth as Proto-agonist in the Fight for (Black) Women's Rights*, 100 B.U. L. REV. 1637, 1640-41 (2020) (describing Sojourner Truth as a "creative and savvy entrepreneur who used the law and her image to advance her activism on multiple fronts and to support herself" and observing, "though she is often lauded as a symbol of the abolition movement, many of Truth's greatest achievements were in advancing the rights of women, especially [B]lack women" (citation omitted)).

⁹⁵ Josephine St. Pierre Ruffin was a "journalist, suffragist and civil rights activist" who "laid the groundwork for the eventual formation of the National Association of Colored

to vote because they saw the value of political participation; yet, as Black women, they risked their safety and faced constant rejection from white women while doing so.

Take the 1913 Woman Suffrage Procession that occurred in Washington, D.C., as just one example.⁹⁶ Alice Paul, a white woman suffragist, organized the parade to occur the day before President Woodrow Wilson's inauguration to pressure him to support women's suffrage.⁹⁷ In seeking support from Southern white women suffragists, Paul sought to keep Black women out of the march.⁹⁸ Nevertheless, Ida B. Wells-Barnett, members of the Delta Sigma Theta sorority, and other Black women suffragists participated in the march.⁹⁹ As journalists with *The Crisis*, the NAACP's newspaper, praised:

In spite of the apparent reluctance of the local suffrage committee to encourage the colored women to participate . . . and in spite of the conflicting rumors that were circulated and which disheartened many of the colored women from taking part, they are to be congratulated that so many of them had the courage of their convictions and that they made such an admirable showing in the first great national parade.¹⁰⁰

Though given little credit in the history of the Suffrage Movement, Black women walked proudly in the parade and worked to support the passage of the Nineteenth Amendment.¹⁰¹

Once the Nineteenth Amendment was ratified, Black women sought the benefits of their labor. Recognizing "the importance of voting rights for women to effect social change," Black women in some parts of the nation registered to

Women." Anthony W. Neal, *Josephine St. Pierre Ruffin: A Pioneer in the Black Women's Club Movement*, BAY ST. BANNER (Feb. 3, 2016), <https://www.baystatebanner.com/2016/02/03/josephine-st-pierre-ruffin-a-pioneer-in-the-black-womens-club-movement> [https://perma.cc/XHH9-VD8F]; see also Maude T. Jenkins, *She Issued the Call: Josephine St. Pierre Ruffin, 1842-1924*, SAGE, Fall 1988, at 74, 74.

⁹⁶ See Mary Walton, Opinion, *The Day the Deltas Marched into History*, WASH. POST (Mar. 1, 2013), https://www.washingtonpost.com/opinions/the-day-the-deltas-marched-into-history/2013/03/01/eabbf130-811d-11e2-b99e-6baf4ebe42df_story.html; see also Erin Blakemore, *This Huge Women's March Drowned out a Presidential Inauguration in 1913*, HISTORY (Sept. 3, 2018), <https://www.history.com/news/this-huge-womens-march-drowned-out-a-presidential-inauguration-in-1913> [https://perma.cc/8BVL-XF5U].

⁹⁷ Walton, *supra* note 96.

⁹⁸ Blakemore, *supra* note 96 (noting Paul "quietly discouraged" Black women from participating in the procession).

⁹⁹ *1913 Woman Suffrage Procession*, NAT'L PARK SERV., <https://www.nps.gov/articles/woman-suffrage-procession1913.htm> [https://perma.cc/R9GV-YS4G] (last updated Nov. 5, 2021).

¹⁰⁰ *Suffrage Paraders*, 5 CRISIS 296, 296 (1913).

¹⁰¹ See *1913 Woman Suffrage Procession*, *supra* note 99; see also Conway, *supra* note 89, at 65-66 (noting duality of Black women working for women's suffrage but being discriminated against during Procession by white women).

vote and voted after the Nineteenth Amendment's ratification.¹⁰² For example, at least nine faculty members of the Virginia Normal and Industrial Institute, a historically Black university now known as Virginia State University, became the first Black women in their town to vote in 1920.¹⁰³ That same year, in Richmond, Virginia, community activist Ora Brown Stokes and banker Maggie L. Walker organized a successful voter registration drive that led to approximately 2,500 Black women becoming registered voters.¹⁰⁴

This celebration of voting access was short-lived. States enacted racist and discriminatory laws and enforced unwritten discriminatory policies during the Jim Crow Era that stopped eligible voters, now including Black women, from voting.¹⁰⁵ The executive, legislative, and judicial branches used their authority to implement racist voter suppression schemes to stop the Black community from voting.¹⁰⁶ Accordingly, "the legal sanctions that had given the vote to the Southern Negro remained on the books, but on election day the Negro generally remained at home. To keep Negroes from the polls and thus consolidate white

¹⁰² *Ora Brown Stokes (1882-1957)*, VA. CHANGEMAKERS, <https://edu.lva.virginia.gov/changemakers/items/show/384> [<https://perma.cc/37XR-3SPF>] (last visited Dec. 7, 2022).

¹⁰³ *1920 First Colored Women To Vote in Ettrick, Virginia*, HBCU LIBR. ALL., <https://hbcudigitalibrary.auctr.edu/digital/collection/VSUD/id/471> [<https://perma.cc/C5AM-4N5W>] (last visited Dec. 7, 2022).

¹⁰⁴ *Ora Brown Stokes (1882-1957)*, *supra* note 102.

¹⁰⁵ The Fifteenth Amendment was ratified in 1870, authorizing access to the ballot box for Black men. U.S. CONST. amend. XV. Within six years, however, it was clear that many Black men would not access that promise. In an 1876 speech to the Republican National Convention, Frederick Douglass exclaimed:

You say you have emancipated us. You have; and I thank you for it. You say you have enfranchised us. You have; and I thank you for it. But what is your emancipation?—what is your enfranchisement? What does it all amount to, if the [B]lack man, after having been made free by the letter of your law, is unable to exercise that freedom, and, after having been freed from the slaveholder's lash, he is to be subject to the slaveholder's shot-gun?

Frederick Douglass, Speech of Frederick Douglass at the 1876 Republican National Convention (June 1876), in OFFICIAL PROCEEDINGS OF THE NATIONAL REPUBLICAN CONVENTIONS OF 1868, 1872, 1876 AND 1880, at 251 (1903). Douglass continued his quest to see the promise of the Fifteenth Amendment twelve years later at the 1888 Republican National Convention to no avail. Frederick Douglass, Speech of Frederick Douglass at the 1888 Republican National Convention (June 19, 1888), in PROCEEDINGS OF THE NINTH REPUBLICAN NATIONAL CONVENTION 22 (1888), <https://babel.hathitrust.org/cgi/pt?id=pst.000024443319&view=1up&seq=28&skin=2021> [<https://perma.cc/A2KF-LFVN>] ("[L]et us remember these [B]lack men now stripped of their constitutional right to vote. . . . Leave these men no longer to wade to the ballot box through blood but extend over them the arm of this Republic, and make their pathway to the ballot box as straight and as smooth and as safe as any other citizen's.").

¹⁰⁶ See PAULA A. MONOPOLI, CONSTITUTIONAL ORPHAN: GENDER EQUALITY AND THE NINETEENTH AMENDMENT 41 (2020); Susan D. Carle, Reconstruction's Lessons 39-48 (July 28, 2022) (unpublished manuscript) (on file with author) (describing judicial efforts to weaken Reconstruction Era's civil rights gains for Black men).

control, ingenious and sometimes violent methods were employed.”¹⁰⁷ This concerted, government-sanctioned effort kept eligible Black voters—first Black men and then, after the passage of the Nineteenth Amendment, all Black people—from the ballot box.¹⁰⁸

Because of the violence and legally enforced tactics employed, Black women had to develop plans and maneuvers to address the obstacles they faced to attempt to register to vote and vote. In Richmond, Virginia, soon after Stokes and Walker’s successful registration drive had occurred, city officials refused to allow Black women to register to vote, even after they had stood in line all day.¹⁰⁹ To support Black women in their desire to access the ballot box, Stokes worked with other voting rights activists to develop a “phone system to alert women when to come [into city hall] to register.”¹¹⁰ Understanding that their votes should be considered and counted, Black women continued to risk their lives and livelihoods to support the right to vote for themselves and others.

As Black communities sought to build momentum around the realization of the right to vote for all members of the Black community, the Civil Rights Movement grew. During the Civil Rights Movement, Black women’s efforts were instrumental, but they were given little recognition for their work, yet again.¹¹¹ In fact, during the 1963 March on Washington that brought thousands of people to Washington, D.C., to protest Black people’s exclusion from voting, not one Black woman was scheduled to offer her own remarks.¹¹²

¹⁰⁷ U.S. COMM’N ON C.R., REPORT OF THE U.S. COMM’N ON C.R., 1959, at 30 (1959); TRACI BURCH, SENT’G PROJECT, A STUDY OF FELON AND MISDEMEANANT VOTER PARTICIPATION IN NORTH CAROLINA 12 (2007) (“Parties and other partisans reinforce[d] the notion that ‘speaking out is ineffective and risky.’ Voter intimidation has existed as a way of influencing election outcomes throughout the nation’s history. . . . Practices such as poll taxes, literacy tests, and white primaries were used for decades to prevent [Black people] from voting. These legal restrictions were also backed by violence” (citation omitted)).

¹⁰⁸ See Elizabeth D. Katz, *Sex, Suffrage, and State Constitutional Law: Women’s Legal Right To Hold Public Office*, 33 YALE J.L. & FEMINISM 110, 115 (2022) (explaining white women were able to obtain public office positions that were not granted to Black women because of racist and sexist intersectional hurdles).

¹⁰⁹ *Ora Brown Stokes (1882-1957)*, *supra* note 102.

¹¹⁰ *Id.*

¹¹¹ Jeanne Theoharis, *How Women’s Voices Were Excluded from the March*, MSNBC (Sept. 4, 2013, 9:15 PM), <https://www.msnbc.com/melissa-harris-perry/how-womens-voices-were-excluded-the-msna155781> [<https://perma.cc/BTG8-NGJN>]. Civil rights leader Dorothy Height noted that “women became much more aware and much more aggressive in facing up to sexism in our dealings with the male leadership in the movement.” Dorothy I. Height, “*We Wanted the Voice of a Woman To Be Heard*”: *Black Women and the 1963 March on Washington*, in *SISTERS IN THE STRUGGLE: AFRICAN AMERICAN WOMEN IN THE CIVIL RIGHTS-BLACK POWER MOVEMENT* 83, 89 (Betty Collier-Thomas & V.P. Franklin eds., New York Univ. Press 2001).

¹¹² After much protest from Black women Civil Rights Movement leaders, March organizers offered a limited tribute to six Black women. See Ama Kwarteng, *Tribute to Women: Spotlighting the 6 Women Honored During the First March on Washington*, COSMOPOLITAN (Aug. 28, 2020), <https://www.cosmopolitan.com/politics/a33822164>

After the March on Washington, legal scholar, and civil rights activist, Reverend Pauli Murray, frustrated by the disregard of Black women's work, pronounced, "The Negro woman can no longer postpone or subordinate the fight against discrimination because of sex to the civil rights struggle but must carry on both fights simultaneously."¹¹³ Murray explained that women's "full participation and leadership" were "necessary to the success of the civil rights revolution," but both the movements to increase the rights of Black people and women ignored the intersectional experiences of Black women.¹¹⁴

Because of their intersectional alignment, Black women did not benefit from the rights the Fifteenth and Nineteenth Amendments promised until the passage of federal legislation in the 1960s.¹¹⁵ The Voting Rights Act of 1965, in particular, was "widely regarded as one of the most successful pieces of civil

/women-march-on-washington [https://perma.cc/8NVF-RBPF]. Unfortunately, "[t]he women being honored weren't even allowed to march with the men" and, though a woman delivered the Tribute's introduction, a man wrote the remarks and emphasized women's support of men's efforts. *See id.*; *see also* Krissah Thompson, *Women—Nearly Left off March on Washington Program—Speaking Up Now*, WASH. POST (Aug. 22, 2013), https://www.washingtonpost.com/lifestyle/style/women-nearly-left-off-march-on-washington-program-speaking-up-now/2013/08/22/54492444-0a79-11e3-8974-f97ab3b3c677_story.html (quoting sole woman in the March's organizing committee, Anna Harold Hedgeman, as saying, "In light of the role of the Negro women in the struggle for freedom and especially in light of the extra burden they have carried because of the castration of the Negro man in this culture, it is incredible that no woman should appear as a speaker at the historic March on Washington Meeting at the Lincoln Memorial").

¹¹³ Pauli Murray, Speech to the National Council of Negro Women: The Negro Woman in the Quest for Equality 2 (Nov. 14, 1963), <https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/7/11428/files/2017/03/Murray-The-Negro-Woman-2clsq0g.pdf> [https://perma.cc/2SBJ-QJ67]; *see also* Meghan Weaver, "Freedom!": Black Women Speak at the March on Washington for Jobs and Freedom, STAN.: MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/freedom-black-women-speak-march-washington-jobs-and-freedom> [https://perma.cc/AVX7-LYGV] (last visited Dec. 7, 2022).

¹¹⁴ Murray, *supra* note 113, at 2. In a letter to the head organizer of the March on Washington, Murray wrote:

I have been increasingly perturbed over the blatant disparity between the major role which Negro women have played and are playing in the crucial grass-roots levels of our struggle and the minor role of leadership they have been assigned in the national policy-making decisions. . . . The time has come to say to you quite candidly, Mr. Randolph, that "tokenism" is as offensive when applied to women as when applied to Negroes, and that I have not devoted the greater part of my adult life to the implementation of human rights to now condone any policy which is not inclusive.

N.J. STATE BAR FOUND., THE DAWNING OF THE MODERN CIVIL RIGHTS MOVEMENT 74 (2021), <https://njsbf.org/wp-content/uploads/2021/12/Excerpt-of-Letter-from-Pauli-Murray-to-A.-Phillip-Randolph-Handout.pdf> [https://perma.cc/HLN8-T5ET].

¹¹⁵ Martha S. Jones, *For Black Women, the 19th Amendment Didn't End Their Fight To Vote*, NAT'L GEOGRAPHIC (Aug. 7, 2020), <https://www.nationalgeographic.com/history/article/black-women-continued-fighting-for-vote-after-19th-amendment>.

rights legislation.”¹¹⁶ Further, the Twenty-Fourth Amendment banned the use of poll taxes in federal elections in 1964,¹¹⁷ and the Supreme Court made state poll taxes illegal in 1966.¹¹⁸ Together, the goals of these legislative, constitutional, and judicial actions were to ban the racist and sexist tactics that white people used to terrorize Black people seeking to engage in the electoral process and to authorize enforcement mechanisms to ensure states did not use discriminatory practices when enacting new voting policies.¹¹⁹

Even with the enactment of laws meant to grant actual access to the ballot box, voting restrictions continue to plague Black women, even though they vote in high numbers every election.¹²⁰ For example, the Voting Rights Act and other civil rights legislation did not grant people with criminal convictions the ability to vote.¹²¹

The notion that Black women should be satisfied with their work without receiving the benefits of their work is an example of the “Black woman tax.” According to Najarian Peters, “[t]he Black woman tax is the expectation and projection that the Black woman should be both the mule of the world and be

¹¹⁶ Christopher B. Seaman, *An Uncertain Future for Section 5 of the Voting Rights Act: The Need for a Revised Bailout System*, 30 ST. LOUIS U. PUB. L. REV. 9, 12-15 (2010) (explaining history and purpose of Voting Rights Act of 1965).

¹¹⁷ U.S. CONST. amend. XXIV.

¹¹⁸ *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 684-86 (1966).

¹¹⁹ Seaman, *supra* note 116, at 12-15. The Supreme Court has since gutted critical aspects of the Voting Rights Act’s power to review states’ voting procedures that may result in discriminatory voting outcomes, including in its decisions in *Shelby County v. Holder*, 570 U.S. 529 (2013), and *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021). See Myrna Pérez, *7 Years of Gutting Voting Rights*, BRENNAN CTR. FOR JUST. (June 25, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/7-years-gutting-voting-rights> [https://perma.cc/7ME6-TNNZ]; see also Franita Tolson, *The Spectrum of Congressional Authority over Elections*, 99 B.U. L. REV. 317, 323 (2019) (“[T]he sin of *Shelby County* is not only the neutering of a significant provision of one of the most successful civil rights statutes in history, but also that it leaves a legacy of constitutional interpretation ignorant of the full spectrum of congressional authority in this area.”); Press Release, Brennan Ctr. for Just., Additional Brennan Center Comment: Supreme Court Upholds Discriminatory AZ Voting Laws, Weakens Voting Rights Act (June 25, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/additional-brennan-center-comment-supreme-court-upholds-discriminatory-az> [https://perma.cc/C998-998B] (contending, in *Brnovich* decision, “justices stopped short of eviscerating the Voting Rights Act, but nevertheless did significant damage to this vital civil rights law and to the freedom to vote”).

¹²⁰ Carliss Chatman & Marisa Jackson Sow, *The Disregarded Canary: On the Plight of Black Women Voters*, NW. U. L. REV.: NULR OF NOTE (Oct. 29, 2020), <https://blog.northwesternlaw.review/?p=1826> [https://perma.cc/M55T-J42D]. See generally Lani Guinier, *Keeping the Faith: Black Voters in the Post-Reagan Era*, 24 HARV. C.R.-C.L. L. REV. 393 (1989).

¹²¹ Behrens et al., *supra* note 47, at 560 (“As one of the few remaining restrictions on the right to vote, felon voting bans stand out; indeed, the rapid increase in felon disenfranchisement rates since the early 1970s constitutes a rare example of significant disenfranchisement in an era of worldwide expansion of democratic rights.”).

grateful to occupy that position.”¹²² The tax results in praising Black women for their dedication to democratic principles and consistent voting, while making it harder for them to reap the benefits of those principles. For Black women with criminal convictions, they pay the tax with a ban on their right to vote.

Disenfranchisement due to criminal convictions dates back to the colonial United States, but the implementation of these discriminatory practices proliferated after the Civil War.¹²³ Even after the Civil Rights Movement, white racists used the disenfranchisement maze as a “race neutral” way of suppressing the Black communities’ political participation.¹²⁴

White racists did not hide their goal in implementing voter suppression schemes during the Jim Crow era.¹²⁵ For example, the president of the 1901 Alabama Constitutional Convention justified the decision to add “moral turpitude,” which included “misdemeanors and even . . . acts not punishable by law,” as crimes warranting disenfranchisement because doing so was necessary to avoid “the menace of negro domination.”¹²⁶ Feeding into racist tropes of Black men, the drafter of this more expansive disenfranchisement maze in Alabama’s constitution expected that “the crime of wife-beating alone would disqualify sixty percent of the Negroes.”¹²⁷

Voter suppression schemes like Alabama’s reeked of racist intent, clearly in conflict with the Fourteenth and Fifteenth Amendments’ prohibitions against excluding people from the ballot box because of their race.¹²⁸ Yet, in a 1974 Supreme Court case, *Richardson v. Ramirez*,¹²⁹ the Court held that states have the authority to ban people with criminal convictions from voting and to decide how a person may restore their voting rights.¹³⁰ In its 6-3 opinion, the Court cited

¹²² Email from Najarian Peters, Assoc. Professor of L., Univ. of Kansas Sch. of L., to Carla Laroche, Assoc. Clinical Professor, Washington & Lee Univ. Sch. of L. (July 5, 2022, 11:16 AM) (on file with author) (referencing Zora Neale Hurston’s use of “mule” in *Their Eyes Were Watching God* to stress Black women’s lowly position in the world). Peters explains that though society views Black women as mules, “[m]ule is what others project and expect of us. We have to continue to reject that to save ourselves.” *Id.*

¹²³ See *id.* at 563, 565 tbl.2; *Historical Timeline: U.S. History of Felon Voting/Disenfranchisement*, BRITANNICA: PROCON.ORG, <https://felonvoting.procon.org/historical-timeline> [<https://perma.cc/84VC-EVD8>] (last updated Oct. 25, 2022).

¹²⁴ Behrens et al., *supra* note 47, at 568 (“Whereas structural and economic changes have reduced the social acceptability of explicit racial bias, current ‘race-neutral’ language and policies remain socially and culturally embedded in the discriminatory actions of the past.”).

¹²⁵ See *id.* at 569-72 (displaying language from speeches given by legislators in support of disenfranchising Black men).

¹²⁶ *Id.* at 569.

¹²⁷ *Id.* at 571.

¹²⁸ U.S. CONST. amends. XIV, XV.

¹²⁹ 418 U.S. 24 (1974).

¹³⁰ *Id.* at 26-43. In seeking to make the voter suppression schemes less powerful, three individuals who had completed their sentences and paroles—Abran Ramirez, Larry Gill, and Albert Lee—filed a writ of mandate to the California Supreme Court in 1972, alleging that the California state law banning them from voting because of their criminal convictions was

to Section 2 of the Fourteenth Amendment¹³¹ to explain that these voter suppression schemes were “an affirmative sanction”¹³² that Congress approved of in allowing states to disenfranchise people convicted of committing crimes.¹³³ Ultimately, the Court held that these voter suppression schemes did not violate the Equal Protection Clause of the Fourteenth Amendment.¹³⁴

With the approval of the Supreme Court, state voter suppression schemes based on people’s history of conviction continued.¹³⁵ The disenfranchisement maze currently varies among jurisdictions across the United States, and this disparity causes further harm and confusion. Ann Cammett describes the negative impact of divergent voter suppression schemes and other civil consequences associated with criminal convictions in this way:

The effect on any given individual depends on the jurisdiction in which he or she resides, as well as whether the conviction occurred previously in another state with different penalties. Consequently, a working knowledge of collateral consequences is beyond the expertise of most criminal defense attorneys, even when they are inclined to counsel defendants in this regard. Moreover, as a rule, courts do not require attorneys to inform clients entering into plea agreements of these sanctions. Accordingly, people with criminal convictions are often surprised when they encounter these roadblocks after release and are left to fend for themselves in navigating them.¹³⁶

This confusion feeds the disenfranchisement maze.

The proliferation of racist law enforcement practices and policies led to the mass incarceration and the use of the criminal legal system to remove Black

unconstitutional under the Fourteenth Amendment in 1972. *Id.* at 26-33. The California Supreme Court ruled in their favor and held that the voting ban violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 27. Viola Richardson, the County Clerk of Mendocino County, appealed the state court’s decision, arguing for the constitutionality of California’s voter suppression scheme. *Id.* at 43, 58.

¹³¹ U.S. CONST. amend. XIV, § 2. (“[W]hen the right to vote at any election . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of [the state’s] representation therein shall be reduced. . .”).

¹³² *Ramirez*, 418 U.S. at 54.

¹³³ *Id.* at 42-46.

¹³⁴ *Id.* at 56.

¹³⁵ As of 2021, forty-eight states maintain policies of varying extremes that disenfranchise citizens based on conviction status. JEAN CHUNG, SENT’G PROJECT, VOTING RIGHTS IN THE ERA OF MASS INCARCERATION: A PRIMER 1 (2021), <https://www.sentencingproject.org/app/uploads/2022/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf> [<https://perma.cc/3XLT-Y6GA>]. In recent years, certain states have found ways to loosen the clutches of the disenfranchisement maze. For example, in 2018, Louisiana passed a statute that “[a]uthorized voting for residents who have not been incarcerated for five years including persons on felony probation or parole.” *Id.* at 5; *see also* BURCH, *supra* note 107, at 32 (naming states that have changed their voter suppression schemes).

¹³⁶ Cammett, *supra* note 27, at 373 (footnotes omitted).

people from electoral participation.¹³⁷ As mass incarceration and convictions grew, Black men faced, and continue to face, the highest rates of incarceration and convictions in the country.¹³⁸ Because of the racist efforts of state legislatures and Congress during the Jim Crow era and afterward, Black men had more access to prison than the ballot box, and their convictions led to voting disenfranchisement.¹³⁹ With the disproportionate erasure of Black men from their communities and the already limited access to the ballot box for the Black community, Black women engaged in the political process to use the vote to further Black community interests and have continued to face barriers.¹⁴⁰

C. Gender and Jim Crow's Legacy

Because of their intersectional identities, the criminal legal system has harmed Black women throughout U.S. history. While advocates have focused on men and boys when discussing mass incarceration, “[t]he United States has incarcerated women since the nation’s first prisons emerged”¹⁴¹ and the rate of arrest and incarceration of women has grown exponentially since then.¹⁴² During the colonial and antebellum periods, “criminalized [B]lack womanhood by subjecting [B]lack women to brutality and exploitation and by barring them from lawful avenues for redress.”¹⁴³ Further, between 1866 and 1928, Black women

¹³⁷ *Id.*; CHRISTOPHER UGGEN, RYAN LARSON, SARAH SHANNON & ARLETH PULIDO-NAVA, SENT’G PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 1, 9-12 (2020), <https://www.sentencingproject.org/app/uploads/2022/08/Locked-Out-2020.pdf> [<https://perma.cc/NZ8E-3JCT>]; Erika K. Wilson, *The Legal Foundations of White Supremacy*, 11 DEPAUL J. SOC. JUST. 1, 2 (2018) (“Race generally and white supremacy specifically are embedded into the framework of most American social institutions.”).

¹³⁸ See generally MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (rev. ed. 2012); Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL’Y INITIATIVE (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html> [<https://perma.cc/KW27-2WQ9>].

¹³⁹ See ALEXANDER, *supra* note 138, at 180 (“More [Black men] are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified.”).

¹⁴⁰ See Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1291-92 (2004); Rodriguez, *supra* note 13 (“We always say Black women take the community with them to the polls. They fight for not just themselves, but their family, their neighbors and for the community as a whole.”).

¹⁴¹ Amber Baylor, *Centering Women in Prisoners’ Rights Litigation*, 25 MICH. J. GENDER & L. 109, 111 (2018) (citing KARLENE FAITH, UNRULY WOMEN: THE POLITICS OF CONFINEMENT & RESISTANCE 128-29 (Seven Stories Press new ed. 2011) (1993)).

¹⁴² Candice Norwood, *Trauma on Top of Trauma: Why More Women Are Dying in Jails*, 19TH (July 13, 2021, 10:08 AM), <https://19thnews.org/2021/07/women-jail-deaths-increasing> [<https://perma.cc/6656-4W63>].

¹⁴³ Kali Nicole Gross, *African American Women, Mass Incarceration, and the Politics of Protection*, 102 J. AM. HIST. 25, 25-26 (2015).

represented over 80% of the women held in jails and prisons.¹⁴⁴ In Georgia and other southern states during that period, Black women made up 99% of the women incarcerated in the prison and jail facilities.¹⁴⁵

In the 1970s and onward, the tough-on-crime laws and the War on Drugs policing fueled the incarceration of Black women.¹⁴⁶ Crucially, “[s]tructural racism anchored the rise of the private prison boom, and the prison-industrial complex has resulted in the mass removal of Black women from society into institutional captivity.”¹⁴⁷ Since the 1980s, the rate of incarceration of women has increased by over 475%,¹⁴⁸ with Black women being incarcerated at a disproportionately higher rate.¹⁴⁹ Between 2005 and 2018, the rate of jail incarceration for women increased by 10%, compared to a decline of the rate of jail incarceration for men of 14%.¹⁵⁰ Notably, while the incarceration rate of Black women has been decreasing and that of white women increasing, Black women continue to be incarcerated at a much higher rate than white women overall.¹⁵¹

Michele Goodwin described the attack on Black women’s liberty as “the unyielding, state-sanctioned violence against Black women,”¹⁵² the same terms

¹⁴⁴ Talitha L. LeFlouria, *Criminal Justice Reform Won’t Work Until It Focuses on Black Women*, WASH. POST (Feb. 12, 2021, 6:00 AM), <https://www.washingtonpost.com/outlook/2021/02/12/criminal-justice-reform-wont-work-until-it-focuses-black-women/>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ SENT’G PROJECT, INCARCERATED WOMEN AND GIRLS, *supra* note 35, at 1. According to the Sentencing Project, “The total count in 2020 represents a 30% reduction from the prior year—a substantial but insufficient downsizing in response to the COVID-19 pandemic, which some states began to reverse in 2021.” *Id.* In 2021, the rate of incarceration of women had increased by 700% since 1981. Nazish Dholakia, *Women’s Incarceration Rates Are Skyrocketing. These Advocates Are Trying To Change That.*, VERA INST. OF JUST. (May 17, 2021), <https://www.vera.org/news/womens-voices/womens-incarceration-rates-are-skyrocketing> [https://perma.cc/TLU9-558C].

¹⁴⁹ See Laroche, *supra* note 32, at 9.

¹⁵⁰ ZHEN ZENG, BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., JAIL INMATES IN 2018, at 4 (2020), <https://bjs.ojp.gov/content/pub/pdf/ji18.pdf> [https://perma.cc/S7L7-JZQR].

¹⁵¹ E. ANN CARSON, BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., PRISONERS IN 2019, at 16 (2020), <https://bjs.ojp.gov/content/pub/pdf/p19.pdf> [https://perma.cc/NUC9-3EFE]; SENT’G PROJECT, INCARCERATED WOMEN AND GIRLS, *supra* note 35, at 2.

¹⁵² Michele Goodwin, *The New Jane Crow: Women’s Mass Incarceration*, JUST SEC. (July 20, 2020), <https://www.justsecurity.org/71509/the-new-jane-crow-womens-mass-incarceration> [https://perma.cc/V49A-ND4Q]. See generally VALENA BEETY, MANIFESTING JUSTICE: WRONGLY CONVICTED WOMEN RECLAIM THEIR RIGHTS (2022) (analyzing law enforcement and mass incarceration through lenses of gender, race, sexual identity, and sexual orientation); Ashley Givens, Andrea Murray-Lichtman, Tonya B. Van Deirse, MacKenzie Dallenbach, Mariah Cowell Mercier, Evan M. Lowder & Gary S. Cuddeback, *Individuals with Mental Illnesses on Probation: The Intersection of Trauma, Race, and Gender*, 17 FEMINIST CRIMINOLOGY 494 (2022) (reporting high rates of interpersonal trauma for women

used regarding the inhumane violence Black women endured during slavery.¹⁵³ Recent research has found that law enforcement are more likely to make traffic stops of and arrest Black women at higher rates than white and Latina women.¹⁵⁴ The incarceration of women, especially Black women, “ignores the social and psychological forces that often underlie female offending.”¹⁵⁵ These factors include high rates of trauma, unaddressed mental health concerns, self-medication and substance use disorder, and poverty.¹⁵⁶ Further, the majority of the offenses that women are convicted of are drug- and property-related.¹⁵⁷

According to The Sentencing Project, a reform research and policy nonprofit, one million women are under the control of the criminal legal system, whether that is through incarceration in jail and prison, or under probation, parole, or other state regulated practices.¹⁵⁸ Researchers estimate that between those who are incarcerated, those who are under the state’s control, and those who have criminal records, an estimated one million women cannot vote.¹⁵⁹ Accordingly, Jim Crow’s racist legacy impacts women’s right to vote immensely.

on probation and finding, while white women reported higher rates of experiencing sexual assaults, Black women had highest rates of posttraumatic stress disorder among all women).

¹⁵³ JONES, *supra* note 17, at 11, 86 (describing different forms of violence and oppression Black women faced during enslavement).

¹⁵⁴ *Policing Women: Race and Gender Disparities in Police Stops, Searches, and Use of Force*, PRISON POL’Y INITIATIVE (May 14, 2019), <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen> [<https://perma.cc/C95H-SNQV>] (“[T]he invisibility of Black women and other women of color in the national discourse about policing . . . means that the full scope of racial discrimination in policing is unknown, and certainly understated.”).

¹⁵⁵ Beryl Ann Cowan, *Incarcerated Women: Poverty, Trauma and Unmet Need*, AM. PSYCH. ASS’N (Apr. 17, 2019), <https://www.apa.org/pi/ses/resources/indicator/2019/04/incarcerated-women> [<https://perma.cc/WF4B-T3DZ>].

¹⁵⁶ *Id.*; Wendy Sawyer & Wanda Bertram, *Prisons and Jails Will Separate Millions of Mothers from Their Children in 2022*, PRISON POL’Y INITIATIVE (May 4, 2022), https://www.prisonpolicy.org/blog/2022/05/04/mothers_day [<https://perma.cc/Y3W5-SGRJ>].

¹⁵⁷ See Kajstura, *supra* note 35; Elizabeth Winkler, *Why Oklahoma Has the Most Women Per Capita in Prison*, WALL ST. J. (Jan. 2, 2018, 8:00 AM), <https://www.wsj.com/articles/why-oklahoma-has-the-most-women-per-capita-in-prison-1514898001> (quoting Kris Steele, former speaker of the House in Oklahoma, on types of crimes women in Oklahoma are convicted of—“non-violent, low-level”—and Oklahoma’s disproportionately higher sentences than other states).

¹⁵⁸ SENT’G PROJECT, INCARCERATED WOMEN AND GIRLS, *supra* note 35, at 1. The vast majority of women are on post-release control, either under probation (763,425 women) or parole (103,542). *Id.* The system controls 83,054 women in prison and 69,800 in jail. *Id.* For a discussion of the long-term social impact of women’s incarceration, see generally Jessica Lynne Younts, *American Epidemic: The Societal and Multi-generational Impacts Caused by the Mass Incarceration of Women in the United States* (2021) (Ph.D. dissertation, Nova Southeastern University), https://nsuworks.nova.edu/fse_etd/347 [<https://perma.cc/V5A7-EBSD>].

¹⁵⁹ CHRISTOPHER UGGEN, RYAN LARSON, SARAH SHANNON & ROBERT STEWART, SENT’G PROJECT, *LOCKED OUT 2022: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION* 2, 10 (2022), <https://www.sentencingproject.org/app/uploads/2022/10/Locked->

Further, these voting restrictions are not applied the same across the country. Black women in states like Virginia may be eligible under the criteria set by the governor to have their voting rights restored, but they must wait until the governor decides to do so.¹⁶⁰ In states like Idaho and Oklahoma, which have the highest rates of incarceration of women,¹⁶¹ Black women's right to vote is restored automatically after completion of any imposed period of incarceration, probation, or parole.¹⁶² This disenfranchisement by geography causes confusion and prevents Black women in one state from engaging in a right that Black women in another state can.

It's life or death. . . . People like me, we have a better understanding of the issues, the problems people are going through, what keeps people down. If people like me don't vote, when people get into office they don't hear us, they don't hear our concerns and our issues. They can close their eyes to the truth.

—Rosemary McCoy¹⁶³

II. CHALLENGING THE DISENFRANCHISEMENT MAZE IN FLORIDA

Because of mass incarceration and racially motivated policing,¹⁶⁴ Black women have been banned from voting and have had to navigate the disenfranchisement maze while trying to address their communities' needs.¹⁶⁵ Those who have sought to weaken these voter suppression schemes have been met with legislative, executive, and judicial roadblocks. To illustrate this point, this Part will examine the history of voter suppression based on criminal

Out-2022-Estimates-of-People-Denied-Voting.pdf [https://perma.cc/UZH7-NJNN]. See generally JANET GARCIA-HALLET, INVISIBLE MOTHERS: UNSEEN YET HYPERVISIBLE AFTER INCARCERATION (2022) (reviewing struggles mothers of color endure as they navigate marginalization and “invisible punishments” in employment after release from incarceration).

¹⁶⁰ Restoration of Rights Process, SEC'Y OF THE COMMONWEALTH: KAY COLES JAMES, <https://www.restore.virginia.gov/restoration-of-rights-process> [https://perma.cc/3RH7-2R4V] (last visited Dec. 7, 2022) (explaining voting rights restoration process after felony conviction and release from incarceration).

¹⁶¹ Rachel Cohen, *Idaho Has the Highest Female Incarceration Rate in the Country*, BOISE ST. PUB. RADIO (Jan. 13, 2022, 9:26 AM), <https://www.boisestatepublicradio.org/news/2022-01-13/idaho-has-the-highest-female-incarceration-rate-in-the-country> [https://perma.cc/J5N8-A9MM].

¹⁶² *Can People Convicted of a Felony Vote?*, supra note 29.

¹⁶³ Rosemary McCoy is a mother and grandmother who filed a lawsuit in federal court on behalf of women of color with felony convictions who could not vote in Florida. Esther Schrader, *Battle for the Ballot: Two Black Women Fight Back Against Voter Suppression in Florida*, S. POVERTY L. CTR. (Mar. 16, 2021), <https://www.splcenter.org/news/2021/03/16/battle-ballot-two-black-women-fight-back-against-voter-suppression-florida> [https://perma.cc/4P7Y-7PWV].

¹⁶⁴ See generally SUSAN BURTON & CARI LYNN, BECOMING MS. BURTON: FROM PRISON TO RECOVERY TO LEADING THE FIGHT FOR INCARCERATED WOMEN (2019).

¹⁶⁵ See supra Section I.C.

convictions in Florida. While many states have imposed disenfranchisement mazes that barred millions of people from voting, Florida led the nation.¹⁶⁶ Over a million Floridians still cannot vote because the state banned people with felony convictions, including Black women, from voting.¹⁶⁷ This Part describes the attempts people directly impacted by the state's voter suppression laws and their allies made to weaken these laws, and the methods used to derail those justice efforts by the legislative, executive, and judicial branches. In doing so, this Part will show how attempts by Black women and others to increase the automatic restoration of people's voting rights have, to date, been no match for voter suppression schemes.

A. *Florida's Disenfranchisement Maze: Background*

Florida has a significantly higher rate of incarceration than the U.S. average,¹⁶⁸ and its rate of incarceration of women is also higher than the national average.¹⁶⁹ These individuals must endure heightened barriers to reentry that come with convictions and incarceration.

Florida has had a history of excluding people with felonies from voting.¹⁷⁰ Since its first constitution, enacted in 1838, Florida has banned the enfranchisement of people "convicted of bribery, perjury, or other infamous crime."¹⁷¹ During and after the Civil War, Florida sought to stop Black men from accessing their right to vote by enacting Black Codes to criminalize Black people's attempts to work and live as free people in the state.¹⁷² The state's 1865

¹⁶⁶ UGGEN ET AL., *supra* note 137, at 4 ("Florida thus remains the nation's disenfranchisement leader in absolute numbers, with over 1.1 million people currently banned from voting. . . . [Florida is one of seven states where] more than one in seven African Americans is disenfranchised, twice the national average for African Americans.").

¹⁶⁷ *Id.*

¹⁶⁸ See *Florida Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/FL.html> [<https://perma.cc/J2UD-N93J>] (last visited Dec. 7, 2022).

¹⁶⁹ Compare Wendy Sawyer, *Florida Prison Incarceration Rates: Women*, PRISON POL'Y INITIATIVE (Jan. 2018), https://www.prisonpolicy.org/graphs/FL_Women_Rates_1978_2015.html [<https://perma.cc/L9M5-RQKB>], with Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, PRISON POL'Y INITIATIVE (Jan. 9, 2018), https://www.prisonpolicy.org/reports/women_overtime.html [<https://perma.cc/NTU4-7MSZ>].

¹⁷⁰ See Carla Laroche, Opinion, *Black Women's Voting Rights Silenced Yet Again*, TAMPA BAY TIMES (Aug. 21, 2020), <https://www.tampabay.com/opinion/2020/08/21/black-womens-voting-rights-silenced-yet-again-column> [<https://perma.cc/7ALG-AAZQ>].

¹⁷¹ FLA. CONST. art. VI, § 4 (1838) ("The General Assembly shall have power to exclude . . . from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime."); see also ERIKA L. WOOD, BRENNAN CTR. FOR JUST., FLORIDA: AN OUTLIER FOR DENYING VOTING RIGHTS 5 (2016), https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf [<https://perma.cc/3LAU-72AH>]; Franita Tolson, "In Whom Is the Right of Suffrage?": *The Reconstruction Acts as Sources of Constitutional Meaning*, 169 U. PA. L. REV. 2041, 2055-56 (2021).

¹⁷² WOOD, *supra* note 171, at 4.

constitution allowed only “free white males” to vote.¹⁷³ Then, in its 1868 constitution, officials worked to undermine the right to vote that the Fourteenth Amendment created for Black men.¹⁷⁴ Accordingly, after the state passed restrictive and racist constitutional amendments that stopped Black men from voting, “a moderate Republican leader boasted that he had kept Florida from becoming ‘niggerized.’”¹⁷⁵ These racist principles remain in the Florida constitution.

In 2018, the state constitutional voter suppression provision applied to any person convicted of a felony.¹⁷⁶ People were not allowed to access many of their civil rights, including registering to vote and running for political office.¹⁷⁷ A person’s restoration of their right to vote required a restoration process, which the Florida state governor had the authority to adopt and which could vary with each administration.¹⁷⁸ Because of this authority, people had to navigate each governor’s views on re-enfranchisement every four years; that is, with a new administration came a new process people had to review, digest, and comply with to have any hope of getting their right to vote back.¹⁷⁹

Comparing the processes and number of people granted the restoration of their voting rights by Republican gubernatorial administrations since 1999 illustrates this point. During John Ellis “Jeb” Bush’s eight-year tenure as governor from 1999 to 2007, his Administration changed the restoration process for certain individuals.¹⁸⁰ In addition, litigation during Governor Bush’s tenure resulted in more individuals becoming eligible to vote.¹⁸¹ In total, approximately

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 5.

¹⁷⁵ *Id.* (quoting *Johnson v. Governor of Fla.*, 353 F.3d 1287, 1296 (11th Cir. 2003), *vacated*, 377 F.3d 1163 (11th Cir. 2004)).

¹⁷⁶ Under the state constitution applicable in 2018, “[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights.” FLA. CONST. art. VI, § 4(a) (2018).

¹⁷⁷ *Id.*

¹⁷⁸ FLA. CONST. art. IV, § 8(a) (1968).

¹⁷⁹ See WOOD, *supra* note 171, at 9.

¹⁸⁰ FLA. ADVISORY COMM. TO THE U.S. COMM’N ON C.R., RULES OF EXECUTIVE CLEMENCY SHOULD ALLOW LEVEL-1 OFFENDERS TO HAVE THEIR CIVIL RIGHTS AUTOMATICALLY RESTORED UPON COMPLETION OF THEIR SENTENCES 9 (2014), https://www.usccr.gov/files/pubs/docs/FL_SAC_Ex-Felon-Report.pdf [<https://perma.cc/N3Y3-UBSP>] (noting in 2004, Governor Bush allowed for automatic rights restoration for people based upon length of time since prior conviction and original conviction type); MARC MAUER & TUSHAR KANSAL, SENT’G PROJECT, BARRED FOR LIFE: VOTING RIGHTS RESTORATION IN PERMANENT DISENFRANCHISEMENT STATES 11 (2005), <https://static.prisonpolicy.org/scans/barredforlife.pdf> [<https://perma.cc/T8U7-JUEZ>].

¹⁸¹ Fla. Caucus of Black State Legislators, Inc. v. Crosby, 877 So. 2d 861, 864 (Fla. Dist. Ct. App. 2004) (requiring Florida Department of Corrections to help people with felony convictions navigate disenfranchisement maze); *see also* Fla. Conf. of Black State Legislators v. Moore, No. 01-659 (Fla. Cir. Ct. Aug. 21, 2008) (dismissing in light of settlement lawsuit alleging Florida Department of Corrections failed to assist people with restoration of their

75,000 people regained their voting rights during Governor Bush's administration.¹⁸²

His successor, Charlie Crist, served four years as governor of Florida. During his tenure, he authorized an automatic restoration process for certain convictions.¹⁸³ If people were convicted of certain criminal acts, they were relieved of the arduous disenfranchisement maze. Implementing an automatic restoration process, even for select offenses, increased people's ability to regain their voting rights more easily and resulted in the restoration of 150,000 people's voting rights during Governor Crist's four-year term.¹⁸⁴

When Richard "Rick" Scott took over as Governor of Florida in 2011, he removed the automatic restoration process that had helped thousands of people regain their voting rights.¹⁸⁵ Instead, Governor Scott imposed a disenfranchisement maze that made it difficult to gain access to the ballot box. Governor Scott's process required people to endure waiting periods before they could even start the application to restore their rights.¹⁸⁶ After the applicable waiting period, if people obtained all the information needed to complete their application, then they would have to wait further for the State Board of Executive Clemency to review the documents.¹⁸⁷ At that point, should the State Board decide that the applicants met the restoration requirements, the Governor

civil rights after their release from supervision, as required under Section 944.293, Florida Statutes as it existed in 2001); Press Release, ACLU, ACLU Applauds Court Decision Ordering Florida Department of Corrections to Assist Ex-Felons with Voting Rights Restoration (July 14, 2004), <https://www.aclu.org/press-releases/aclu-applauds-court-decision-ordering-florida-department-corrections-assist-ex-felons> [<https://perma.cc/A4M3-7Q6G>].

¹⁸² Renalia Du Bose, *Voter Suppression: A Recent Phenomenon or an American Legacy?*, 50 U. BALT. L. REV. 245, 246 (2021). Between 1999 and 2004, Governor Bush's administration denied over 200,000 applications to restore voting rights. MAUER & KANSAL, *supra* note 180, at 10.

¹⁸³ FLA. RULES OF EXEC. CLEMENCY 9 (2007), <https://www.brennancenter.org/sites/default/files/analysis/FL%201%202007%20reforms.pdf> [<https://perma.cc/BK8J-SSKW>]; Sam Levine, *Florida Officially Changes Jim Crow-Rooted Felon Disenfranchisement Policy*, HUFFPOST (Jan. 8, 2019, 5:45 AM), https://www.huffpost.com/entry/florida-felon-disenfranchisement-reform_n_5c33d3c6e4b01e2d51f5fb5f [<https://perma.cc/D9AD-J35C>].

¹⁸⁴ Du Bose, *supra* note 182, at 246-47; FLA. RULES OF EXEC. CLEMENCY, *supra* note 183, at 9.

¹⁸⁵ Du Bose, *supra* note 182, at 248; see *Felony Disenfranchisement Laws in the United States*, SENT'G PROJECT (Apr. 28, 2014), [<https://perma.cc/F56A-6622>] ("In 2007, the Office of Executive Clemency voted to amend the state's voting rights restoration procedure to automatically approve the reinstatement of rights for many persons who were convicted of non-violent offenses. This decision was reversed in 2011, and persons seeking rights restoration must now wait at least five years after completion of sentence.").

¹⁸⁶ FLA. RULES OF EXEC. CLEMENCY 12 (2011) [hereinafter 2011 CLEMENCY RULES], [http://myfloridalegal.com/webfiles.nsf/WF/SKNS-8ESMMH/\\$file/rulesofexecutiveclemency.pdf](http://myfloridalegal.com/webfiles.nsf/WF/SKNS-8ESMMH/$file/rulesofexecutiveclemency.pdf) [<https://perma.cc/8END-UYMG>] (identifying different processes people must go through to obtain clemency and restore their civil rights).

¹⁸⁷ *Id.*

and the Florida Cabinet—the Attorney General, Chief Financial Officer, and Commissioner of Agriculture—considered people’s applications at public hearings.¹⁸⁸ Applicants waited years for their hearings.¹⁸⁹

While all four members of the Cabinet could vote in support of or against the restoration of applicants’ voting and other civil rights, the Governor still had the final decision; people would not be eligible to vote without Governor Scott’s explicit approval.¹⁹⁰ Governor Scott did not have to follow any particular criteria or laws when reviewing applications and making these decisions; the questions he could and did ask applicants were often unpredictable and discriminatory,¹⁹¹ as were his decisions.¹⁹²

For example, Governor Scott asked some applicants whether they had fathered any children and, if they had, whether the children were by different women or the same woman.¹⁹³ He also asked applicants whether they regularly attend church.¹⁹⁴ Governor Scott’s process resulted in the restoration of rights for “a higher percentage of Republicans and a lower percentage of Democrats than any governor since 1971.”¹⁹⁵ In fact, after Governor Scott learned that one man voted for him, even though the man was ineligible to vote, Governor Scott restored his voting rights immediately.¹⁹⁶

While barriers to voting eligibility existed under Governor Crist’s disenfranchisement maze, the barriers under Governor Scott were often unsurmountable; Governor Scott closed the door on voting restoration for many people who would have been automatically eligible under Governor Crist’s restoration policies.¹⁹⁷ The drastic decrease in the number of people who succeeded in obtaining their voting rights confirms just how restrictive Governor Scott’s disenfranchisement maze became for Floridians. Over the eight years

¹⁸⁸ *Id.*

¹⁸⁹ Du Bose, *supra* note 182, at 249.

¹⁹⁰ FLA. CONST. art. IV, § 8(a) (1968); 2011 CLEMENCY RULES, *supra* note 186, at 12.

¹⁹¹ See Lulu Ramadan, Mike Stucka & Wayne Washington, *Florida Felon Voting Rights: Here’s Who Got Theirs Back Under Scott*, PALM BEACH POST (Oct. 26, 2018, 1:01 PM), <https://www.palmbeachpost.com/story/news/politics/elections/2018/10/25/florida-felon-voting-rights-who-got-theirs-back-under-scott/5886930007> [<https://perma.cc/U4NG-ZE3E>]; Dexter Filkins, *Who Gets To Vote in Florida?*, NEW YORKER (Aug. 31, 2020), <https://www.newyorker.com/magazine/2020/09/07/who-gets-to-vote-in-florida> (“There are absolutely no standards. So we can make any decisions we want. . . . There’s really no law that says you deserve anything.”).

¹⁹² See Ramadan et al., *supra* note 191.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Garrett Epps, *The ‘Slave Power’ Behind Florida’s Felon Disenfranchisement*, ATLANTIC (Feb. 4, 2018), <https://www.theatlantic.com/politics/archive/2018/02/the-slave-power-behind-floridas-felon-disenfranchisement/552269>.

¹⁹⁷ See Sam Levine, *24 Years Ago She Lost Her Voting Rights for Pushing a Cop. She Just Got Them Back.*, HUFFPOST (June 25, 2018), https://www.huffpost.com/entry/voting-rights-felons-florida_n_5b2d1816e4b0040e274289e7 [<https://perma.cc/ZFC8-RA5P>].

Governor Scott held the executive role, 2011-2019, fewer than 2,900 people regained their right to vote.¹⁹⁸

B. *Constitutional Amendment Victory and Derailment*

In 2011, advocates recognized the clear suppression of people's right to vote within Governor Scott's policy in 2011.¹⁹⁹ Along with the realization of these negative impacts came a determination to change the disenfranchisement maze in Florida to make the voting restoration process automatic and nonpartisan.²⁰⁰ As individuals continued to work through Governor Scott's disenfranchisement maze in the hopes that he would grant their civil rights back, a grassroots movement developed in support of an initiative to change the state constitution.²⁰¹

Florida has different methods of amending its constitution, one of which is through a voter-led ballot initiative.²⁰² Floridians seeking to pass a state constitutional voter-led amendment must go through several steps. To begin, the proponents of the initiative must get 8% of Floridian voters²⁰³ to complete a petition in support of placing the initiative on the ballot.²⁰⁴ Once the Supervisor of Elections has validated that they have received at least 10% of the necessary threshold, they must forward it to the Attorney General.²⁰⁵ The Florida Supreme

¹⁹⁸ Du Bose, *supra* note 182, at 247.

¹⁹⁹ For example, the Florida Rights Restoration Coalition ("FRCC") is a nonpartisan group that advocates for automatic restoration of civil rights. *See* FLA. RTS. RESTORATION COAL., 2011 ANNUAL CONVENING: AUGUST 19 & 20, 2011, at 2 (2011) (on file with author). In August 2011, over the course of the FRRC's Convening, people directly impacted by Governor Scott's newly imposed disenfranchisement maze process, as well allies and members of state and local organizations, discussed the reversion back to exclusionary practices. *Id.* They also proposed diverse ways to address their concerns, including attempting to meet with the Scott Administration, helping people with their applications, and researching legal remedies. Neel U. Sukhatme, Alexander Billy & Gaurav Bagwe, *Felony Financial Disenfranchisement*, 75 VAND. L. REV. (forthcoming 2023) (manuscript at 13), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4090995# [<https://perma.cc/NDZ9-XVM6>].

²⁰⁰ Sukhatme et al., *supra* note 199 (manuscript at 14).

²⁰¹ *Id.* Discussion of getting a state constitutional amendment passed began before Governor Crist's actions. *See* Abby Goodnough, *Disenfranchised Florida Felons Struggle To Regain Their Rights*, N.Y. TIMES (Mar. 28, 2004), <https://www.nytimes.com/2004/03/28/us/disenfranchised-florida-felons-struggle-to-regain-their-rights.html> (mentioning organizations had started drive to get constitutional amendment on ballot in 2004).

²⁰² *See* FLA. CONST. art. XI; Johnson v. Governor of Fla., 405 F.3d 1214, 1220-22 (11th Cir. 2005) (en banc) (recounting constitutional revision process conducted in 1968).

²⁰³ FLA. CONST. art. XI, § 3 (declaring threshold number of petitions was "equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen").

²⁰⁴ FLA. DIV. OF ELECTIONS, FLA. DEP'T OF STATE, 2018 INITIATIVE PETITION HANDBOOK 5 (2017), <https://files.floridados.gov/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> [<https://perma.cc/BDL2-X43M>] (stating signed petition lapses after two years).

²⁰⁵ *Id.* at 3.

Court receives the initiative language from the Attorney General and reviews the proposed language.²⁰⁶ Should the proposed language survive the court's scrutiny, the ballot initiative proponents will continue collecting signed petitions.²⁰⁷ Then, once it has received the threshold 8% of eligible voters, the Supervisor of Elections places the measure on the ballot.²⁰⁸ To pass, at least 60% of people who vote in that election must vote in support of the state constitutional ballot initiative.²⁰⁹

Spurred by Governor Scott's limiting of the re-enfranchisement process, people directly impacted by his actions engaged in this difficult but promising ballot initiative effort.²¹⁰ The Florida Rights Restoration Coalition ("FRRC"), led by Desmond Meade²¹¹ and other directly impacted people, with support that included the American Civil Liberties Union of Florida and the League of Women Voters of Florida, worked on the ballot measure.²¹² Operating under the political group Floridians for a Fair Democracy, Inc., the movement's goal was to enact a less restrictive process and to eliminate the need to navigate the whims of each successive gubernatorial administration.²¹³

After several years of drafting, researching, testing, community education, and advocacy, community leaders and members united to have voters consider the voting rights restoration ballot initiative language, known as Amendment 4, during the November 2018 election.²¹⁴ Amendment 4's language read, in pertinent part:

[(a)] Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall

²⁰⁶ *Id.* The court reviews the initiative language, title, and summary to ensure they deal with only "one subject and matter" and do not have any defects. FLA. CONST. art. XI, § 3; FLA. STAT ANN. § 101.161 (West 2022).

²⁰⁷ See FLA. DIV. OF ELECTIONS, *supra* note 204, at 3.

²⁰⁸ *Id.*

²⁰⁹ FLA. CONST. art. XI, § 5(e).

²¹⁰ See Levine, *supra* note 197.

²¹¹ See Joseline Jean-Louis Hardrick, *Let My People Vote: My Battle To Restore the Civil Rights of Returning Citizens*, FLA. BAR J. (Apr. 2022), <https://www.floridabar.org/the-florida-bar-journal/let-my-people-vote-my-battle-to-restore-the-civil-rights-of-returning-citizens/> [<https://perma.cc/AUA9-WXX8>] (describing Meade's rise from being released from prison to leading a statewide movement to pass state constitutional amendment for voting rights); Desmond Meade, MACARTHUR FOUND. (Sept. 28, 2021), <https://www.macfound.org/fellows/class-of-2021/desmond-meade> [<https://perma.cc/JVH7-75QS>] (profiling Meade upon his selection as 2021 MacArthur "Genius Grant" awardee).

²¹² See generally FLA. RTS. RESTORATION COAL., *supra* note 199.

²¹³ See *Committee Tracking System: Floridians for a Fair Democracy, Inc.*, FLA. DIV. OF ELECTIONS, FLA. DEP'T OF ST., <https://dos.elections.myflorida.com/committees/ComDetail.asp?account=64388> [<https://perma.cc/PPW9-JUE3>] (last visited Dec. 7, 2022).

²¹⁴ FLA. DEP'T OF STATE, CONSTITUTIONAL AMENDMENT PETITION FORM 1 (2018) [hereinafter CONSTITUTIONAL AMENDMENT PETITION FORM], <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf> [<https://perma.cc/7KV5-NZX8>].

terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.²¹⁵

FRRC and its partners used the idea of second chances to present Amendment 4's significance to voters.²¹⁶ Under its language, individuals convicted of a felony who sought to vote in Florida could do so once they completed their court-imposed criminal sentence.²¹⁷ Their sentence would include not only any term of incarceration, but, also, any period of parole and probation associated with the sentence.²¹⁸ Amendment 4's language required those with convictions for murder or sexual crimes to still go through the disenfranchisement maze before they could become eligible to vote.²¹⁹

Almost 65% of voters supported the measure, surpassing the 60% threshold.²²⁰ Amendment 4 is now in the Florida state constitution.²²¹ Article VI, Section 4 of the Florida state constitution, which addresses electoral disqualifications and voter suppression due to felony conviction, as adopted in 2018, now states:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until

²¹⁵ *Id.*

²¹⁶ *Say YES to second chances, VOTE YES on 4 in November*, SECOND CHANCES [https://perma.cc/9PMW-FKJ5] (last visited Dec. 7, 2022) ("Floridians from all walks of life believe in forgiveness, redemption, restoration and, ultimately, second chances.").

²¹⁷ CONSTITUTIONAL AMENDMENT PETITION FORM, *supra* note 214, at 1.

²¹⁸ *Id.*

²¹⁹ *Id.* (stating people excluded from voting under Amendment 4 would have to continue to go through gubernatorial discretion and related barriers to restore their rights); PAUL WRIGHT, HUM. RTS. DEF. CTR., FLORIDA AMENDMENT 4-HRDC FACT SHEET 1-2 (2018), https://www.prisonlegalnews.org/media/publications/Amendment_4_short_version_9-17-18_p0GvWDL.pdf [https://perma.cc/LM8T-CMCM]. While recognizing the value of Amendment 4, Paul Wright, the founder of a nonprofit that advocates for the rights of people who are incarcerated and convicted of crimes, opposed Amendment 4 for that very reason. As he explained, "At a very base level, Amendment 4 pits members of an impoverished and oppressed community against one another." Paul Wright, *The Case Against Amendment 4 on Felon Voting Rights*, PALM BEACH POST (Oct. 29, 2018, 2:01 AM), <https://www.palmbeachpost.com/story/news/politics/elections/2018/10/29/point-of-view-case-against-amendment-4-on-felon-voting-rights/9430966007>. He also noted, "No other state constitution singles out citizens by conviction offense with respect to restoration of voting rights." *Id.*

²²⁰ *Florida Amendment 4, Voting Rights Restoration for Felons Initiative* (2018), BALLOTPEdia [hereinafter BALLOTPEdia], [https://ballotpedia.org/Florida_Amendment_4_Voting_Rights_Restoration_for_Felons_Initiative_\(2018\)](https://ballotpedia.org/Florida_Amendment_4_Voting_Rights_Restoration_for_Felons_Initiative_(2018)) [https://perma.cc/H4FK-9X35] (last visited Dec. 7, 2022); *Voting Restoration Amendment 14-01*, FLA. DEP'T OF ST.: FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> [https://perma.cc/H89N-TPLQ] (last visited Dec. 7, 2022).

²²¹ See FLA. CONST. art. VI, § 4(a)-(b).

restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.²²²

As with other constitutional amendments and laws enacted to increase voting access, celebrations abounded.²²³ To the voting rights advocates, especially those who led the movement while knowing they could not vote in November 2018 because of their felony convictions, the passage of Amendment 4 seemed like a watershed moment. While people who were incarcerated, convicted of certain felonies, and those under post-conviction supervision still could not vote under Amendment 4's provisions, advocates believed that their dream that over a million people living in Florida would be eligible to vote automatically and without gubernatorial intervention had come to fruition finally. As a result of Amendment 4's passage, people with felonies began to register to vote and did vote in local elections in January 2019.²²⁴

Unfortunately, the state legislature and governor snatched that moment of celebration and free access to the ballot box away. In 2019, the state legislature limited Amendment 4 by passing Senate Bill 7066 ("SB 7066"), which Governor Ronald "Ron" DeSantis signed into law in June 2019.²²⁵ Because of SB 7066, the movement for greater access to vote hit a wall. While government officials claimed that SB 7066 simply implemented the provisions of Amendment 4, it required people to pay all their legal financial obligations, or LFOs, before they

²²² *Id.*

²²³ Rosemary McCoy & Sheila Singleton, *The Fight for Voting Rights Marches On*, FLA. POL. (Jan. 18, 2022), <https://floridapolitics.com/archives/487648-rosemary-mccoy-sheila-singleton-the-fight-for-voting-rights-marches-on> [https://perma.cc/NU4C-S6AD] (highlighting excitement associated with voting and sense of reclaiming power once able to register to vote).

²²⁴ Under Florida's constitution, Amendment 4 did not become law until January 8, 2019. FLA. CONST. art. XI, § 5(e); *see also* KEVIN MORRIS, BRENNAN CTR. FOR JUST., ANALYSIS: THWARTING AMENDMENT 4, at 4 (2019), https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf [https://perma.cc/U2HN-MZFZ] (estimating that at least 2,000 Floridians who were formerly incarcerated registered to vote in January, February, and March, and that those newly registered individuals under Amendment 4's passage equaled about ninety-nine times the average number of people who registered in those months in 2017 and 2015 after obtaining their voting rights); McCoy & Singleton, *supra* note 223 (noting McCoy and Singleton voted in local election after Amendment 4 came into effect); Filkins, *supra* note 191 (quoting Betty Riddle, a Black woman who voted for the first time in March 2020 at the age of sixty-two because of Amendment 4, as saying it was "[l]ike a gift from Heaven").

²²⁵ FLA. STAT. § 98.0751(2) (2019). Floridian voters elected Governor DeSantis in the November 2018 election, and he was sworn in to lead the state executive branch in January 2019.

would be eligible to vote.²²⁶ Per SB 7066, any fine, fee, cost, restitution, or other financial requirement associated with their felony criminal charge and/or imposed by the court at sentencing would be an LFO.²²⁷

Not only did SB 7066 require individuals to repay all the LFOs associated with their sentence, but the legislature also made it harder for people with LFOs to pay them off.²²⁸ SB 7066 dictated that people's attempts to convert their LFOs in criminal cases to civil debts would not grant them voting eligibility.²²⁹ Instead, people must still consider LFOs unpaid, even if they are no longer recorded under the criminal matter.²³⁰

With the high rate of unemployment and underemployment of individuals with criminal records, clearly, SB 7066 would cause the number of people eligible to vote in Florida to drop, given its impact on those with felony convictions.²³¹ The Florida Department of Corrections estimated²³² that

²²⁶ See *id.*; BALLOTPEDIA, *supra* note 220. In 2021, the DeSantis Administration altered the way individuals get their right to serve on a jury restored after a felony conviction. FLA. RULES OF EXEC. CLEMENCY 9 (2021), https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf [<https://perma.cc/CJV7-8JZB>]. The new rules followed the same requirements as SB 7066; people had to pay all of their LFOs before they were eligible for jury duty. *Id.*

²²⁷ See FLA. STAT. § 98.0751(2)(a)(5); BALLOTPEDIA, *supra* note 220. For voting rights eligibility purposes under Amendment 4, the fees associated with prison incarceration and post-release matters would not be added to the LFO requirements. FLA. STAT. § 98.0751(2)(a)(5)(c). LFOs go back to post-Civil War times, when states would use the outstanding debts “as a means of effectively re-enslaving African-Americans, allowing landowners and companies to ‘lease’ [B]lack convicts by paying off criminal justice debt that they were too poor to pay on their own.” ALICIA BANNON, MITALI NEGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUST., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 19 (2010).

²²⁸ Under SB 7066, people could request a reduction in their LFO by doing community service at a preset hourly rate and requesting that the court offset their LFOs by that amount. This approach could require hundreds of hours of community service, depending on the LFO amount. Damon Winter & Jesse Wegman, Opinion, *When It Costs \$53,000 To Vote*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/10/07/opinion/election-voting-fine-felony-florida.html> (reporting that thirty-year-old man learned he would have to complete 700 hours of community service to pay off \$7,331.89 in LFOs that arose out of conviction when he was sixteen years old).

²²⁹ FLA. STAT. § 98.0751(2)(e)(III) (“The requirement to pay any financial obligation specified in this paragraph is not deemed completed upon conversion to a civil lien.”).

²³⁰ *Id.*

²³¹ Annie Harper, Callie Ginapp, Tommaso Bardelli, Alyssa Grimshaw, Marissa Justen, Alaa Mohamedali, Isaiah Thomas & Lisa Puglisi, *Debt, Incarceration, and Re-entry: A Scoping Review*, 46 AM. J. CRIM. JUST. 250, 268 (2021) (finding debt significantly burdens those who have experienced incarceration, imposes disproportionate hardship on Black people, and potentially increases risk of recidivism).

²³² Florida does not have a reliable statewide database that people can access to determine how much they owe in LFOs. Each of Florida's sixty-seven counties has its own records for criminal cases and its own way of storing their case files. Some counties have not digitized their records and they require individuals to go to the clerk's office to request their court files

Floridians on probation, parole, or community supervision “owed an average of \$8,195 in restitution alone,” which does not include any fines and fees.²³³ With an average monthly income of \$1,559.00, the ability to pay off LFOs is highly unlikely.²³⁴ LFO requirements disproportionately harm Black women with criminal convictions.²³⁵ They have a high rate of unemployment, meaning they are less likely to have the income necessary to pay off their LFOs compared to other similarly situated communities.²³⁶

Black women also report that any income they did earn, they spent on their families’ and their needs.²³⁷ For example, when Raquel Wright, a forty-six-year-old Black mother residing in Florida, discussed the over \$54,000 in LFOs she owed, she expressed the importance of supporting herself and her sixteen-year-old daughter.²³⁸ Wright said:

I have her day-to-day care: feeding, clothing, basic needs. I have our phone bills. I have my car insurance. I have medical bills. . . . I’m never going to be able to pay that [LFO] off in my lifetime. Especially now, being that my employment is hindered with this charge. I’m always told I’m overqualified or I didn’t pass the background check.²³⁹

in-person. Others have made court documents available online, but only for cases opened in the recent past; people with convictions before certain dates would not have online access. Further, some records were destroyed, purposefully or accidentally, and they may be illegible, even if they are available. *See* Winter & Wegman, *supra* note 228.

²³³ CAMPAIGN LEGAL CTR. & GEO. L. C.R. CLINIC, CAN’T PAY, CAN’T VOTE: A NATIONAL SURVEY ON THE MODERN POLL TAX 19-22 (2019) [hereinafter CAN’T PAY, CAN’T VOTE], https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf [<https://perma.cc/F4EN-WFF2>] (revealing “estimated 10 million people owe more than \$50 billion in fines and fees related to criminal convictions” and that “average family of a returning citizen owed approximately \$13,600 in fines and fees alone”); *see also* Alan Rosenthal & Marsha Weissman, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction* 3, 10-12 (Ctr. for Cmty. Alts., Working Paper, 2007), <https://communityalternatives.org/wp-content/uploads/2020/04/sentencing-for-dollars-financial-consequences-of-criminal-conviction.pdf> [<https://perma.cc/7TDR-R8FC>]; Winter & Wegman, *supra* note 228.

²³⁴ *See* CAN’T PAY, CAN’T VOTE, *supra* note 233, at 23; MORRIS, *supra* note 224, at 3 (“We found that formerly incarcerated Floridians who registered to vote in the first quarter of 2019 tended to be much lower income, have less college education, and come from neighborhoods with higher unemployment than the rest of the state’s voters.”); Younts, *supra* note 158 (manuscript at 30) (“Some estimates state that 20% of the United States poverty rate could [be] attributed to the 60% of formerly incarcerated people returning to the community that face the reality of long-term unemployment.”).

²³⁵ *See* Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> [<https://perma.cc/3KZE-Q9W3>].

²³⁶ *Id.*

²³⁷ Winter & Wegman, *supra* note 228.

²³⁸ *Id.*

²³⁹ *Id.*

Wright's words emphasized the weight the LFOs carried over her as she navigates raising her daughter within a society that refuses to look past her conviction to hire her for a full-time steady job.

Amendment 4, as understood to create an automatic right to vote after completion of any period of incarceration and parole or probation, granted voting eligibility to approximately 1.4 million people.²⁴⁰ With SB 7066, however, at least 40% of those individuals would no longer be eligible to vote; researchers estimated that SB 7066 would exclude at least 560,000 individuals because they had not paid their LFOs.²⁴¹ Other sources estimated that SB 7066 disenfranchised a higher amount of people—approximately 700,000 people.²⁴² These individuals would have been eligible to vote after Amendment 4's passage without SB 7066.²⁴³

Knowing that these additional financial requirements would prevent hundreds of thousands of formerly eligible people from voting, Governor DeSantis signed SB 7066 into law anyway.²⁴⁴ When he did so, Governor DeSantis also sent Florida Secretary of State Laurel Lee a transmittal letter outlining his issues with the new law.²⁴⁵ Governor DeSantis recognized Amendment 4's automatic voting rights restoration for certain people with felonies, but he made the determination that voters had made a mistake in approving the amendment. For Governor DeSantis, the voters should not have approved the automatic voting rights restoration initiative.²⁴⁶ Even though 49.6% of voters elected him governor in the November 2018 election,²⁴⁷ he assessed, without citing any data, that the

²⁴⁰ Memorandum from Howard Simon, Exec. Dir., ACLU of Florida, and Marc Mauer, Exec. Dir., The Sent'g Project, to the Executive Board 2nd Chances Team 2 (Feb. 11, 2018) [hereinafter Memorandum from Simon & Mauer], <https://www.documentcloud.org/documents/5775917-Florida-Simon-Mauer-Memo.html> [https://perma.cc/KG7V-CTPJ].

²⁴¹ *Id.*

²⁴² *Florida: Arbitrary Rights Restoration*, FAIR ELECTIONS CTR., <https://www.fairelectionscenter.org/hand-v-scott> [https://perma.cc/U6LU-NJBF] (last visited Dec. 7, 2022) (noting 700,000 Floridians would not be able to vote because of inability to pay).

²⁴³ Memorandum from Simon & Mauer, *supra* note 240, at 2.

²⁴⁴ See Letter from Ron DeSantis, Governor, State of Florida, to Laurel Lee, Sec'y of State, State of Florida 1 (June 28, 2019) [hereinafter Letter from Ron DeSantis], <https://www.flgov.com/wp-content/uploads/2019/06/6.282.pdf> [https://perma.cc/BVM5-B8V4]. Researchers have found that fines and fees led to voter suppression and "contributed to a criminalization of low-income defendants, placing them at risk of ongoing court involvement through new warrants and debt collection." Devah Prager, Rebecca Goldstein, Helen Ho & Bruce Western, *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, 87 AM. SOCIO. REV. 529, 529 (2022).

²⁴⁵ Letter from Ron DeSantis, *supra* note 244, at 1.

²⁴⁶ *Id.*

²⁴⁷ *November 6, 2018 General Election*, FLA. DEP'T OF ST., <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=> (last visited Dec. 7, 2022) (select "Governor and Cabinet" from "Select Office" drop-down menu to show gubernatorial election result data).

65% of voters' decision to approve Amendment 4's automatic process was ill-advised and wrong.²⁴⁸

While Governor DeSantis did not approve of the inclusion of people with certain felony convictions within Amendment 4's impact, he approved of SB 7066's requirements.²⁴⁹ Yet again, gubernatorial actions thwarted people's access to the ballot box.

C. *Black Women's Litigation Advocacy Rebuffed*

Despite SB 7066's passage and gubernatorial support, voting rights advocates continued to conduct get-out-the-vote campaigns and voter registration drives, and collect money to cover people's outstanding LFOs.²⁵⁰ Black women who wanted to vote, like Rosemary McCoy and Sheila Singleton, however, lost the voting eligibility that they had under Amendment 4 because they could not afford their LFOs.²⁵¹

McCoy and Singleton are two Black women and mothers who live in Florida. They understand the power of what Amendment 4 promised. Prior to and upon the passage of the state constitutional amendment, McCoy and Singleton offered public education events about Amendment 4 and helped to register eligible voters with the ACLU of Florida's Jacksonville Chapter.²⁵² After SB 7066, recognizing the disparate impact pay-to-vote laws have on women of color,²⁵³ they filed a lawsuit in federal court as named plaintiffs against Governor DeSantis, Secretary Lee, and several county clerks of court to challenge Florida's newly imposed disenfranchisement maze.²⁵⁴ Based on the Fourteenth

²⁴⁸ *Voting Rights Restoration Efforts in Florida*, BRENNAN CTR. FOR JUST. (Aug. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida> [<https://perma.cc/A89N-R2ED>] (indicating 65% of voters approved of Amendment 4).

²⁴⁹ See Letter from Ron DeSantis, *supra* note 244, at 1.

²⁵⁰ See Blaise Gainey, *Probe Requested After Multi-Million Dollar Donation Made To Pay Felons Fines and Fees*, WFSU PUB. MEDIA (Sept. 25, 2020, 2:42 PM), <https://news.wfsu.org/state-news/2020-09-25/probe-requested-after-multi-million-dollar-donation-made-to-pay-felons-fines-and-fees> [<https://perma.cc/DU2Z-SNLV>]; Daralene Jones, *Florida Voting Rights Advocacy Group Cleared by FDLE After Allegations of Illegal Donations*, WFTV9 (May 19, 2021, 6:34 PM), <https://www.wftv.com/news/florida/florida-voting-rights-advocacy-group-cleared-by-fdle-after-allegations-illegal-donations> /MTM6HBQRRZDODI52FZTPRSMK44 [<https://perma.cc/4HQB-UYJ2>] ("FRRC has raised \$27 million to pay the fines and fees of former convicted felons, so far impacting 44,000 people statewide. The average amount of fines or fees owed, they said, was about \$1,500.").

²⁵¹ See Laroche, *supra* note 170.

²⁵² Transcript of Videoconferencing Proceeding Bench Trial Day 4, at 755, *Jones v. DeSantis*, 462 F. Supp. 3d 1196 (N.D. Fla.) (No. 19-300), *rev'd and vacated sub nom.* *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020), and *aff'd sub nom.* *Jones v. Governor of Fla.*, 15 F.4th 1062 (11th Cir. 2021).

²⁵³ *Couloute & Kopf*, *supra* note 235 (explaining Black women with felonies have higher rate of unemployment than white women, white men, and Black men).

²⁵⁴ First Amended Complaint for Declaratory and Injunctive Relief at 4, *Jones*, 462 F. Supp. 3d 1196 (No. 19-300); *see also* Appellants' Brief at 5, *Jones*, 15 F.4th 1062 (No. 20-

and Nineteenth Amendments to the Constitution, their July 2019 complaint argued that Florida violated their right to access the ballot box because of their race, sex, and lack of wealth.²⁵⁵ This subsection dissects McCoy and Singleton's efforts to dismantle the disenfranchisement maze under SB 7066 and the series of judicial decisions that rejected their constitutional arguments.

In their lawsuit, McCoy and Singleton highlighted the vast disadvantages women of color in poverty, and Black women in particular, would face if SB 7066 survived constitutional review.²⁵⁶ They argued that along with the burden that SB 7066 placed on Black people, violating the Fourteenth Amendment, the trial court should also find their disenfranchisement unconstitutional based on gender discrimination under the Nineteenth Amendment.²⁵⁷ They contended that the courts could not ignore the violation of their constitutional rights at the intersection of race, gender, and class.

Both women had completed all aspects of their incarceration and state control, but could not vote because of SB 7066's LFO requirements.²⁵⁸ Through their own words, expert testimony, and records, McCoy and Singleton explained how women of color in Florida were less likely to be able to pay off their LFOs as compared to men of any race and white women. At the several-days-long consolidated trial in 2020, McCoy and Singleton testified about the impact SB 7066 had on them.²⁵⁹ McCoy and Singleton wanted the court to reinstate their right to vote that SB 7066 took away.

McCoy's records and testimony documented that she was sentenced to twenty-four months of incarceration and eighteen months of probation in 2015.²⁶⁰ The court imposed \$666 in fees and \$6,400 in restitution.²⁶¹ When McCoy was released, she lived with her daughter, was unemployed, and was unable to pay these LFOs.²⁶² At the time of the trial, McCoy owed \$7,806.72 in restitution and interest, which she could not afford to pay.²⁶³

12304); Schrader, *supra* note 163. Voting rights advocates filed lawsuits seeking to protect Amendment 4's objectives and arguing that SB 7066 was unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the twenty-fourth Amendment. The Northern District of Florida trial court judge consolidated McCoy and Singleton's case with the other related cases for pretrial and trial purposes.

²⁵⁵ First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 6.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 26-28.

²⁵⁸ *Id.* at 7.

²⁵⁹ Transcript of Videoconferencing Proceeding Bench Trial Day 4, *supra* note 252, at 749-58; Transcript of Videoconferencing Proceeding Bench Trial Day 3, at 674-89, *Jones*, 462 F. Supp. 3d 1196 (No. 19-300).

²⁶⁰ First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 5.

²⁶¹ *Jones*, 462 F. Supp. 3d at 1211.

²⁶² See Transcript of Videoconferencing Proceeding Bench Trial Day 4, *supra* note 252, at 751.

²⁶³ *Jones*, 462 F. Supp. 3d at 1211; Transcript of Videoconferencing Proceeding Bench Trial Day 4, *supra* note 252, at 754-55. When asked if she had considered doing community service to reduce her LFOs, McCoy noted that she was not aware of that option until she was

After Singleton's conviction in 2011, she was sentenced to six-months' incarceration and three years of probation and was ordered to pay \$771 in fees and costs.²⁶⁴ The district court judge, Judge Robert Lewis Hinkle, revealed the discrepancies with the amounts Singleton owed.²⁶⁵ While court orders indicated Singleton owed thousands of dollars in restitution, the original sentencing court did not enter those orders until years after her sentencing hearing.²⁶⁶ Judge Hinkle explained, "If, as appears likely, Singleton was not ordered to pay restitution until three years after she was sentenced, the State apparently agrees that she can vote without paying the restitution. Singleton would not have known this had she not participated in this litigation."²⁶⁷ Further, Singleton testified that she could only pay \$50 per month towards paying her LFOs.²⁶⁸ With that type of payment plan, Singleton estimated that she would not pay off her LFOs for approximately twenty-one to twenty-six years.²⁶⁹

McCoy and Singleton's attorneys also called expert witnesses, and used their corresponding reports, to describe why the intersectionality of race and gender in the criminal legal system makes SB 7066 particularly egregious for women of color who are in poverty.²⁷⁰ Unfortunately, the evidence and arguments McCoy and Singleton presented at trial did not convince Judge Hinkle fully.²⁷¹

a party to the lawsuit and that, because of her disability and criminal conviction history, she would have limited options. *Id.* at 757.

²⁶⁴ First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 7.

²⁶⁵ *See Jones*, 462 F. Supp. 3d at 1211.

²⁶⁶ *Id.*

²⁶⁷ *Id.* (footnotes omitted). Singleton also owed the fines and costs the court originally imposed, which she could not afford to pay. First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 8-9; Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 679.

²⁶⁸ Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 680.

²⁶⁹ *Id.*

²⁷⁰ *See generally* Expert Report of Amanda L. Weinstein, PhD, *Jones*, 462 F. Supp. 3d 1196 (No. 19-300); Expert Report of Hannah L. Walker, PhD, *Jones*, 462 F. Supp. 3d 1196 (No. 19-300).

²⁷¹ *See Jones*, 462 F. Supp. 3d at 1240. Prior to the trial, Governor DeSantis sought an advisory opinion from the Florida Supreme Court on "whether 'completion of all terms of sentence' under Article VI, section 4 of the Florida Constitution includes the satisfaction of all legal financial obligations, namely fees, fines and restitution ordered by the court as part of a felony sentence that would otherwise render a convicted felon ineligible to vote." Letter from Ron DeSantis, Governor, State of Fla., to Honorable Charles T. Canady, C.J. of the Sup. Ct. of Fla., and the Js. of the Sup. Ct. of Fla. (Aug. 9, 2019), <https://www.brennancenter.org/sites/default/files/legal-work/08-09-2019-Advisory-Opinion-Request.pdf> [<https://perma.cc/S8XP-TBZN>]. In its advisory opinion responsive to the governor, the Florida Supreme Court held that voters understood the term "completion of all terms of sentence" in Amendment 4 to include LFOs. Advisory Op. to the Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1084 (Fla. 2020). Although the Florida Supreme Court's ruling was not binding, the state used the Advisory Opinion as proof that SB 7066 was simply implementing the will of the voters who supported Amendment 4's passage.

In his May 2020 decision, Judge Hinkle held that the LFO requirement of SB 7066 violated the Equal Protection Clause under the Fourteenth Amendment, imposed a poll tax prohibited under the Twenty-Fourth Amendment, and, therefore, was unconstitutional.²⁷² He, however, found that the law did not violate women of color's rights to vote under the Nineteenth Amendment.²⁷³ Judge Hinkle entered a permanent injunction against the enforcement of SB 7066.²⁷⁴ He, however, denied McCoy and Singleton's request that the court hold the impact of their intersectionality as a cognizable legal claim because the Fourteenth and Nineteenth Amendments required discriminatory intent from the government.²⁷⁵ In addition, Judge Hinkle reasoned that because more men had felony convictions and LFOs than women, women did not face a larger disparate impact.²⁷⁶

The state appealed the district court's decision to the Eleventh Circuit Court of Appeals, arguing that SB 7066 did not violate the Constitution.²⁷⁷ In July 2020, the Eleventh Circuit stayed the district court's permanent injunction while the appeal was pending.²⁷⁸ Advocates argued this decision created particular confusion as the 2018 election registration deadline approached.²⁷⁹ In other words, the court's decision was part of the disenfranchisement maze, adding unnecessary twists and turns to the voting process.

After briefing and oral arguments, the Eleventh Circuit issued a lengthy *en banc* decision that approved SB 7066's LFO requirement.²⁸⁰ In reversing Judge Hinkle's opinion, the majority held that SB 7066 violated neither the Fourteenth nor Twenty-Fourth Amendments.²⁸¹

McCoy and Singleton had also appealed Judge Hinkle's holding that SB 7066 did not violate the voting rights of women of color.²⁸² A three-judge Eleventh

²⁷² *Jones*, 462 F. Supp. 3d at 1234.

²⁷³ *Id.* at 1239-40.

²⁷⁴ *Id.* at 1250.

²⁷⁵ *Id.* at 1239-40.

²⁷⁶ *Id.* at 1240 ("[E]ven though the impact on a given woman with LFOs is likely to be greater than the impact on a given man with the same LFOs, the pay-to-vote requirement overall has a disparate impact on men, not women.").

²⁷⁷ *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1028 (11th Cir. 2020).

²⁷⁸ *McCoy v. Governor of Fla.*, No. 20-12003, 2020 WL 4012843, at *1 (11th Cir. July 1, 2020).

²⁷⁹ Seeking additional consideration, the plaintiff-appellees filed an application to the Supreme Court to vacate the Eleventh Circuit's stay. The Court denied the request. *Raysor v. DeSantis*, 140 S. Ct. 2600, 2600 (2020). Justice Sonia Sotomayor issued a dissent noting her strong disapproval of the majority's refusal to recognize the harm the Eleventh Circuit's decision to stay the permanent injunction would have on people in Florida. *Id.* at 2603 (Sotomayor, J., dissenting).

²⁸⁰ *Jones*, 975 F.3d at 1058-59.

²⁸¹ *Id.* at 1016-17, 1028. Judges Martin, Jordan, and Pryor filed three dissenting opinions.

²⁸² The court decided to address McCoy and Singleton's appeal separately after addressing the state's appeal. *Jones v. Governor of Fla.*, 15 F.4th 1062, 1065 (11th Cir. 2021) (noting

Circuit panel heard oral arguments on the merits of their arguments in July 2021. The Eleventh Circuit rejected McCoy and Singleton's gender, race, and class constitutional violation arguments.²⁸³ In its 2021 decision, the court cited to precedent and refused to recognize the unique experiences and added challenges women of color, who are low-income, face when accessing their right to vote, despite the discrimination they face not being intentional.²⁸⁴

As McCoy and Singleton expressed, "Our power evaporated, simply because we cannot pay thousands of dollars."²⁸⁵ In serving as named plaintiffs in the suit against Florida officials, McCoy and Singleton continued the history of advocacy and sacrifice shown by countless Black women before them.²⁸⁶ Yet, different branches of state and federal governments thwarted efforts to expand the right to vote to include women of color with criminal convictions in Florida. On a broader level, through their lawsuit, McCoy and Singleton tried to force the law to acknowledge that they endured different harms than white women and all men faced. The courts declined.

I am not taking this stand because I personally wish for recognition. I am doing it for the future benefit of my whole race.

—Ida B. Wells-Barnett²⁸⁷

III. BLACK WOMEN'S VOTER SUPPRESSION

McCoy's and Singleton's experiences highlighted the state and federal governments' complacency and indifference regarding how their actions to deny access to the ballot box harmed Black women. Florida, however, is not alone in imposing laws and restrictions that support the disenfranchisement maze.²⁸⁸ This Part of the Article explains the harm these exclusionary policies have on Black women and their families and analyzes reasons why the status quo, which bans them from the ballot because of voter suppression, benefits white voters.

McCoy and Singleton did not premise appeal on argument they satisfied discriminatory intent requirement).

²⁸³ *Id.* at 1066-67. For an in-depth analysis of the court's decision and the Nineteenth Amendment, see generally Paula A. Monopoli, *Gender, Voting Rights, and the Nineteenth Amendment*, 20 GEO. J.L. & PUB. POL'Y 91 (2022).

²⁸⁴ *See Jones*, 15 F.4th at 1068.

²⁸⁵ McCoy & Singleton, *supra* note 223.

²⁸⁶ *See supra* Part I.

²⁸⁷ Alana Miller Manesse, *USU Reflects on the 1913 Women's Suffrage Parade*, UTAH ST. TODAY (Feb. 26, 2020), <https://www.usu.edu/today/story/usu-reflects-on-the-1913-womens-suffrage-parade> [<https://perma.cc/WZT3-CK96>].

²⁸⁸ *See* Cammett, *supra* note 27, at 388-91 (summarizing U.S. Courts of Appeals decisions that have held pay-to-vote schemes constitutional); Nora Demleitner, *Felon Disenfranchisement*, 49 U. MEMPHIS L. REV. 1275, 1281 (2019) (noting failed attempts to limit voter suppression based on criminal convictions through litigation).

A. *Ripple Effects of Ballot Box Invisibility*

When given the opportunity, state and federal legislators, executive leaders, and judges have failed to dismantle voter suppression schemes that exclude people with criminal convictions. These laws are not without consequences to those who must endure them. This subsection analyzes how these voter suppression schemes erase Black women's interests from the political sphere and undermine Black families' concerns.²⁸⁹

In general, increased entanglement within the criminal legal system leads to countless collateral consequences of convictions that Black women must navigate.²⁹⁰ Although all people face consequences because of their criminal records, Black women's intersectional place in society requires them to navigate spaces with a different experience than other women and all men.²⁹¹ When Black women with criminal convictions attempt to navigate the disenfranchisement maze to access the vote, the criminal legal system steps in to block their access and prosecutes them for daring to do so.²⁹² Women of color, and Black women in particular, are sentenced more harshly than other individuals after being convicted of violating state laws that ban voting for people with convictions.²⁹³

For those who are incarcerated and those who have criminal convictions, the inability to access the ballot box means they are "unable to advocate for policy changes that could save their lives, because they are unable to access the ballot."²⁹⁴ Further, these voter suppression schemes keep Black women from voting out the officials and judges who continue these racist and sexist policies.²⁹⁵ And when individuals try to mobilize their electoral power while incarcerated, officials punish their efforts with more voter suppression.²⁹⁶

²⁸⁹ See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2085-86 (2017).

²⁹⁰ See Laroche, *supra* note 32, at 543-48.

²⁹¹ See *supra* Section I.A.

²⁹² In a future project, I will analyze the use of the disenfranchisement maze to regulate and criminalize Black women who dare to engage in the voting process. For general summaries of the experiences of two such women, Pamela Moses and Crystal Mason, see *supra* notes 30-31 and accompanying text.

²⁹³ See Rodriguez, *supra* note 30.

²⁹⁴ NAILA S. AWAN & SHRUTI BANERJEE, DEMOS, HOW TO END *DE FACTO* DISENFRANCHISEMENT IN THE CRIMINAL JUSTICE SYSTEM 1 (2020), https://www.demos.org/sites/default/files/2020-05/How%20to%20End%20De%20Facto%20Disenfranchisement%20in%20the%20Criminal%20Justice%20System_0.pdf [<https://perma.cc/X684-4JCY>]; see also Zakrzewski, *supra* note 41 ("A lack of representation means that we lose the important insights and solutions to public policy problems that women of color will bring.").

²⁹⁵ See *Judicial Selection: Significant Figures*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures> [<https://perma.cc/XC3Y-SYNC>] (last updated Oct. 11, 2022) (reporting judge selection methods, including popular elections and gubernatorial appointments).

²⁹⁶ See *id.* (describing how Massachusetts eliminated right to vote for people who are incarcerated as recently as 1997 after people advocated to reform criminal legal system).

And although researchers have found that voting reduces people's rate of re-arrest, the voter suppression schemes persist.²⁹⁷ Specifically, researchers explained, "The basic relationship between crime and voting is now clear: Those who vote are less likely to be arrested and incarcerated, and less likely to report committing a range of property and violent offenses."²⁹⁸ Yet, instead of increasing people's political participation, society furthers their exclusion.

Overall, without their voting participation, Black women receive limited coverage and consideration of their experiences and interests.²⁹⁹ Policymakers view their priorities as less significant.³⁰⁰ For example, in a January 2022 op-ed, McCoy and Singleton explained what the actions of state legislators, the executive, and courts signaled to them, remarking that "[w]hen that court affirmed the poll tax, we lost our say in what we want—for our families, our community, and our country."³⁰¹ While Black women with criminal convictions, like McCoy and Singleton, are working to enhance the right to vote and are on the ground working to have local and national leaders address their communities' needs, those they hold accountable may dismiss their advocacy efforts because of their exclusion from the ballot box; without the right to vote, legislators disavow their interests.³⁰² Ultimately, the disenfranchisement maze feeds upon Black women's overall marginalization to vanquish their potential votes and success.³⁰³

Not only are Black women's own interests devalued, but the disenfranchisement maze causes the suppression of Black families' rights and interests as well.³⁰⁴ McCoy expressed how her inability to vote disadvantages the needs of her family and parenting responsibilities, saying: "If I can't vote, it's hard for me to guide the direction of my grandson. . . . I need to vote. I need to vote for things that matter to my family, my community, my state and the United States of America."³⁰⁵ As McCoy's explanation affirms, many people seek to vote with a focus on the needs of more people than themselves alone;

²⁹⁷ MANZA & UGGEN, *supra* note 24, at 133.

²⁹⁸ *Id.*

²⁹⁹ See BURCH, *supra* note 107, at 11.

³⁰⁰ *Id.* at 3 ("Politicians and political parties face disincentives to mobilize participation among people with felony convictions.").

³⁰¹ McCoy & Singleton, *supra* note 223.

³⁰² BURCH, *supra* note 107, at 30.

³⁰³ See Laroche, *supra* note 32, at 547-48.

³⁰⁴ See Michael B. Mitchell & Jaya B. Davis, *Formerly Incarcerated Black Mothers Matter Too: Resisting Social Constructions of Motherhood*, 99 PRISON J. 420, 423-24 (2019) ("While Black motherhood has never been fully recognized, mothers with incarceration histories are shadowed in relative invisibility.").

³⁰⁵ Ko Bragg, *Courts Asked To Analyze 'Undue Burden' of Florida's Felony Disenfranchisement Law on Black Women*, 19TH (Feb. 13, 2021, 8:00 AM), <https://19thnews.org/2021/02/courts-analyze-undue-burden-floridas-felony-disenfranchisement-law-black-women> [<https://perma.cc/89RG-LSXH>].

those who cannot vote understand the broader implications of that exclusion, which loom large.³⁰⁶

For example, although suppressing one person's voting rights and the interests of their families should call for concern, the voter suppression schemes that do not allow people to vote because of their criminal convictions reach millions. One million women are already in the disenfranchisement maze, but that number does not account for their family members and children they support.³⁰⁷ In the United States, at least 5.1 million children have a parent who is incarcerated or formerly incarcerated.³⁰⁸ It is not surprising that advocates often call the incarceration of mothers a "double sentence," a term signifying the harsh separation children endure from their mothers while their mothers are incarcerated.³⁰⁹ While Black women's physical confinement may cease upon release from jails and prisons, the impact of their criminal records continues long after their release.³¹⁰ As Black women navigate society with a criminal record and/or reunite with family after release, their children and families must do the same with them.

Depending on their state of residence, the children and families of Black women must also face the disenfranchisement maze. Adults who are eligible to vote but who live with others banned from voting may experience *de facto* disenfranchisement.³¹¹ That term represents the way the disenfranchisement maze and lack of understanding of the rights restoration procedures prevent both ineligible and eligible people from voting—even those who can vote do not.³¹² As one source reported,

³⁰⁶ See *supra* note 80 for a discussion of the power of voting and what having access to the ballot box allows for those who are eligible.

³⁰⁷ SENT'G PROJECT, INCARCERATED WOMEN AND GIRLS, *supra* note 35, at 1.

³⁰⁸ THE ANNIE E. CASEY FOUND. & KIDS COUNT, A SHARED SENTENCE: THE DEVASTATING TOLL OF PARENTAL INCARCERATION ON KIDS, FAMILIES AND COMMUNITIES 2 (2016), <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf> [<https://perma.cc/H4U2-4V6Q>]; see also Brief of Interested Parties, Jennifer LaVia & Carla Laroche at 10-11, *In re Advisory Op. to the Governor Re: Implementation of Amend. 4, the Voting Restoration Amend.*, 288 So. 3d 1070 (Fla. 2020) (No. SC19-1341) (describing impact inability to vote had on families, highlighting that, behind data were people with children and communities who supported them, and seeking to remind Florida Supreme Court justices of these individuals' humanity).

³⁰⁹ See Carla Laroche, Lauren Donaldson & Navneet Jaswal, *Double Sentence: The Consequences Incarcerated Mothers Face and the Impact on Their Children*, in THE STATE OF CRIMINAL JUSTICE 207 (Mark E. Wojcik ed., 2016).

³¹⁰ See Laroche, *supra* note 32, at 543-48 (explaining extensive barriers mothers face upon release when trying to reunite with their children held in the family regulation system).

³¹¹ WOOD & BLOOM, *supra* note 25, at 1; Jasmine Ting, *Snoop Dogg Is Voting for the First Time Ever*, PAPER MAG. (June 7, 2020), <https://www.papermag.com/snoop-dogg-vote-2020-2646162250.html> [<https://perma.cc/HP6E-Z7LN>] (explaining forty-eight-year-old rapper Snoop Dogg planned to vote for the first time in 2020, and noting he had described himself as being "brainwashed" into thinking he could not vote because of criminal record).

³¹² See Ting, *supra* note 311; see also ERIKA WOOD, BRENNAN CTR. FOR JUST., RESTORING THE RIGHT TO VOTE 12 (2009), <http://www.brennancenter.org/sites/default/files/legacy>

A 2009 study found that eligible and registered [B]lack voters were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies—while white voters' probability of voting decreased by only 1 percent in such states. The study's results "suggest that [felony disenfranchisement] exacerbates the bias against low socioeconomic status racial and ethnic minorities in electoral outcomes and policy responsiveness."³¹³

In these situations, children do not experience the "thrill" of their mothers voting. They do not feel that their families are part of the social political power.³¹⁴ And they are not.

During her trial testimony, Singleton confirmed the power voting gave her and what it meant to have the state take it away, again. She explained:

It gave me my stability as a [B]lack woman. I've got family. I got grandkids, and I wanted to—I wanted to instill in them how important it was to be able to vote. And by me not being able to vote, that's something that I couldn't do because I wasn't able to vote, but now I can give them that stability, how important it is because you get your voice back, you be able to voice your opinion in such a way, you know, and you can be a part of something—it's great—in the community.³¹⁵

Voter suppression policies hurt communities and create barriers for those who are incarcerated and those with criminal convictions.

The challenges Black women face go beyond voting. The attacks on Black families' right to vote increase their vulnerability and lack of access to what other families obtain much more easily.³¹⁶ Enduring incarceration, separation from family, and navigating life with a criminal conviction amplifies the different and restrictive systems, institutions, and people with whom Black women must interact.³¹⁷

/Democracy/Restoring%20the%20Right%20to%20Vote.pdf [https://perma.cc/J7BA-9P9F]; Matt Shuham, *Some Eligible Ex-Felons Fear Voting Because of Ron DeSantis*, HUFFPOST (Oct. 28, 2022, 4:15 PM), https://www.huffpost.com/entry/ron-desantis-florida-former-ex-felon-voter-fraud-arrests_n_635c084ae4b0cf522df862a8?j2p [https://perma.cc/GB8B-BHL4].

³¹³ ERIN KELLEY, BRENNAN CTR. FOR JUST., *RACISM & FELONY DISENFRANCHISEMENT: AN INTERTWINED HISTORY* 3 (2017) (quoting Melanie Bowers & Robert R. Preuhs, *Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons*, 90 SOC. SCI. Q. 722, 741 (2009)).

³¹⁴ Brief of Interested Parties, Jennifer LaVia & Carla Laroche, *supra* note 308, at 17-18; Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 686.

³¹⁵ Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 686.

³¹⁶ Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 119 (2020) ("As many feminist scholars have noted, to become an autonomous individual, people depend upon family, community, and various forms of state assistance. Since interdependence is the true status quo, a vulnerability analysis acknowledges the role of both state and non-state actors in co-producing volatility." (footnote omitted)).

³¹⁷ Laroche, *supra* note 32, at 543-46.

Their distrust of the criminal legal system leads to a further distrust of the political process, voting, and government aid.³¹⁸ The result of voter suppression laws is a sense of legal estrangement. As developed by Monica C. Bell, the term “legal estrangement” means:

[A] process by which the law and its enforcers signal to marginalized groups that they are not fully part of American society—that they are not imbued with all the freedoms and entitlements that flow to other Americans, such as dignity, safety, dreams, health, and political voice, to name a few.³¹⁹

Access to the ballot box allows for connection with society; to exclude members of the country who would otherwise be eligible to vote but cannot vote disconnects people from society.³²⁰ Because of criminal convictions and state disenfranchisement laws, Black women, their families, and communities cannot access the same voting rights as those without criminal convictions.³²¹ By suppressing their right to vote, society signals to the people who cannot vote and must navigate the disenfranchisement maze that their interests do not warrant consideration and that others are better suited to decide for them.³²² To endure legal estrangement is to recognize that society neither appreciates nor desires the value their votes should offer.³²³

³¹⁸ See BURCH, *supra* note 107, at 13 (“[B]ecause of their previous experiences with law enforcement and the criminal justice system, [people] may be especially susceptible to intimidation tactics that threaten voters with fines, imprisonment, or other punishments.”); see also Brief of Interested Parties, Jennifer LaVia & Carla Laroche, *supra* note 308, at 4.

³¹⁹ Monica C. Bell, *Legal Estrangement: A Concept for These Times*, FOOTNOTES, July-Aug. 2020, at 7, 8, <https://www.asanet.org/news-events/footnotes/jul-aug-2020/features/legal-estrangement-concept-these-times> [<https://perma.cc/4ZAW-VVZJ>].

³²⁰ Roberts, *supra* note 140, at 1292 (“The geographic concentration of mass incarceration translates the denial of individual felons’ voting rights into disenfranchisement of entire communities.”).

³²¹ See *id.*; Cammett, *supra* note 27, at 369 (“[F]or many low-income African Americans, incarceration creates not just shadow citizens in an individual sense but shadow communities as well.”).

³²² Notably, in *The New Jim Crow*, Michelle Alexander expressed that people with criminal justice histories may not register to vote, even when eligible, because they fear doing so “would somehow attract attention to them—perhaps land them back in jail.” ALEXANDER, *supra* note 138, at 160. Reaching back in history, Alexander explained that people worried about the different levels of racial oppression; “many Southern [Black people] have vivid memories of the harsh consequences that befell their parents and grandparents who attempted to vote in defiance of poll taxes, literacy tests, and other devices adopted to suppress the [B]lack vote.” *Id.*

³²³ Judy Bolden, a Black woman who was released from prison over twenty years ago and could not vote in Florida because she owed \$53,000 in LFOs, lamented, “It’s like I’m not a citizen. . . . That’s what they’re saying.” Winter & Wegman, *supra* note 228. As Reuben Jonathan Miller explained it:

Whether for narcotics, sex, or murder charges, formerly incarcerated people are locked out of political and economic life. No matter how long ago the offense occurred, the lengths they’ve gone to repay harms they may have caused, or if questions persist about

B. *The Benefit to White Voters*

Even while enduring legal estrangement, voter suppression, and de facto disenfranchisement, Black women and their families continue to refuse to accept the efforts to marginalize their power. Black women strive to participate in the electoral process, while knowing there are many barriers that keep them from voting.³²⁴ For example, after the Eleventh Circuit held Florida's law requiring people to pay all LFOs prior to becoming eligible to vote—SB 7066—did not violate the Constitution, McCoy and Singleton have continued to promote access to the ballot box for others. Their dedication to ensuring people who are eligible actually vote is so strong and their belief in political empowerment remains so deep that they founded Harriet Tubman Freedom Fighters, Inc. ("HTFF"), a nonprofit organization that offers community education and mobilizes voters in Florida.³²⁵

This subsection examines why the U.S. population accepts arcane and onerous practices that undervalue Black women's interests and efforts. Voting laws and practices are less restrictive and more inclusionary of people with criminal convictions in many other countries that have a less punitive view of their criminal legal system.³²⁶ "The United States is the only Western democracy that permits the permanent denial of voting rights for individuals with felony convictions."³²⁷

While organizations like the League of Women Voters stress that "[o]ur democracy is strongest when every voice is heard," society allows the disenfranchisement mazes and voter suppression laws to persist.³²⁸ Individuals

their guilt. Put differently, people with felony records never fully regain their citizenship.

This is not an accident, but the direct result of policies we've enacted that allow us to treat formerly incarcerated people as if they aren't citizens at all.

Reuben Jonathan Miller, *How Thousands of American Laws Keep People 'Imprisoned' Long After They're Released*, POLITICO (Dec. 30, 2020, 4:30 AM), <https://www.politico.com/news/magazine/2020/12/30/post-prison-laws-reentry-451445> [<https://perma.cc/H2LN-CQEH>].

³²⁴ McCoy & Singleton, *supra* note 223.

³²⁵ In *Harriet Tubman Freedom Fighters, Corp. v. Lee*, HTFF served as an organizational plaintiff in a 2021 lawsuit against Florida state officials seeking to bar the enforcement of another law signed by Governor DeSantis, which reduced Floridian's access to the ballot box. Amended Complaint at 11, *Harriet Tubman Freedom Fighters, Corp. v. Lee*, 576 F. Supp. 3d 994 (N.D. Fla. 2021) (No. 4:21-cv-00242).

³²⁶ See Hadar Aviram & Jessica L. Willis, *Reintegrating Citizens: Felon Enfranchisement, Realignment, and the California Constitution*, 4 J.C.R. & ECON. DEV. 619, 625-26 (2015).

³²⁷ For the People Act of 2021, H.R. 1, 117th Cong. § 1402(14) (2021); see BRANDON ROTTINGHAUS, INCARCERATION AND ENFRANCHISEMENT: INTERNATIONAL PRACTICES, IMPACT AND RECOMMENDATIONS FOR REFORM 24-26 (2003), http://www.prisonpolicy.org/scans/08_18_03_Manatt_Brandon_Rottinghaus.pdf [<https://perma.cc/8EFM-M83P>] (remarking though Armenia, Cameroon, Chile, Belgium, Finland, New Zealand, and Philippines also disenfranchised people for criminal offenses, considerably more people in United States cannot vote than in these other countries).

³²⁸ *Expanding Voter Access*, LEAGUE OF WOMEN VOTERS, <https://www.lwv.org/voting-rights/expanding-voter-access> [<https://perma.cc/P6YA-6X99>] (last visited Dec. 7, 2022).

offer different reasons for supporting and allowing these voter suppression schemes to exist, including punishment, social-contract violations, and election-integrity protection.³²⁹ Under the punishment theory, the disenfranchisement maze should be an additional price one pays for being convicted of a crime.³³⁰ For the social-contract violation theorists, someone with a criminal record broke the expectations and responsibilities society expects people to follow, and, therefore, must face the continued consequences of disturbing those social norms.³³¹ As for the election-integrity protection theory, adherents do not want someone who committed a crime to be able to influence policies by voting.³³² Yet researchers have found that many “lay persons in favor of criminal disenfranchisement laws . . . have a hard time articulating exactly why” they believe so.³³³

Racism is another incredibly important reason that society supports these voter suppression schemes, and this reason may account for society’s unwillingness to articulate this discrimination publicly.³³⁴ One researcher found

³²⁹ Neely Baugh-Dash, Note, *Criminal Disenfranchisement: Deconstructing Its Justifications and Crafting State-Centered Solutions*, 7 BELMONT L. REV. 123, 132-37 (2019) (discussing most prevalent justifications for disenfranchisement maze).

³³⁰ *Id.* at 132 (“For those supporting this theory, temporary or permanent disenfranchisement is part of measuring out justice to those who have violated the rules of social order.”); see also Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement*, 56 STAN. L. REV. 1147, 1150 (2004) (“One of the linchpins of current doctrine regarding criminal disenfranchisement statutes is the assumption that these laws are essentially regulatory, rather than punitive. . . . The current conception so undercuts originally regulatory justifications for disenfranchising offenders that only penal justifications remain. Thus, if felon disenfranchisement is to be justified, it must be justified as a permissible form of punishment.”); 148 CONG. REC. 1500 (2002) (statement of Sen. George Allen) (“[Voter suppression is] part of the price one pays when they commit a felony and they are convicted . . . This is one of the many rights one gives up. . . . To get all of their liberties and rights back, they have to demonstrate good behavior.”).

³³¹ See Brian Pinaire, Milton Heumann & Laura Bilotta, *Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons*, 30 FORDHAM URB. L.J. 1519, 1525-26 (2003); see also Baugh-Dash, *supra* note 329, at 132-33. When asked whether they helped people complete the certificate needed to restore their voting rights, Tennessee election officials said they were against people with convictions getting their voting rights restored. WOOD & BLOOM, *supra* note 25, at 7.

³³² See Roger Clegg, *Who Should Vote?*, 6 TEX. REV. L. & POL. 159, 172 (2001) (“It is not unreasonable to suppose that those who have committed serious crimes may be presumed to lack this trustworthiness and loyalty.”); Baugh-Dash, *supra* note 329, at 133.

³³³ Baugh-Dash, *supra* note 329, at 137 (citing Pinaire et al., *supra* note 331, at 1541) (discussing 2003 study that asked people to select reason why they support voter suppression schemes, where “felons have proven that they should not be treated as citizens” received most votes, but “none of the above/some other category” came in second).

³³⁴ See Victoria Shineman, *Racial Animus Is Decreasing Support for the Voting Rights of Citizens with Felony Convictions* 18 (Oct. 25, 2018) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272685 [<https://perma.cc/423W->

that individuals with negative attitudes toward Black people were less likely to support the enfranchisement of people with felonies.³³⁵ For these individuals, the association between criminality and Blackness leads to erasing people's right to vote.³³⁶ Darren Hutchinson explained that "despite the formal recognition of equal protection, the law, including criminal law and enforcement, continues to operate in a manner that preserves whites' social dominance."³³⁷

A 2022 study found an increase in the incarceration of Black people in states the provisions of the Voting Rights Act of 1965 were supposed to target.³³⁸ The researchers found that white voters and policymakers used the criminal legal system to regulate and control Black communities after they could no longer use the overt racism Jim Crow authorized.³³⁹ A law hailed as a successful method of enhancing Black voting rights³⁴⁰ was also a source of fear for white people that led to the imprisonment of Black people to limit their political power.

8LFG] (finding increased levels of racial animus correlated with decreased support for enfranchisement of citizens convicted of felony).

³³⁵ *Id.* at 12-13.

³³⁶ See Marissa Jackson Sow, *Whiteness as Contract*, 78 WASH. & LEE L. REV. 1803, 1836 (2022); Jessi Quizar, *A Bucket in the River: Race and Public Discourse on Water Shutoffs in Detroit*, 26 SOC. IDENTITIES 429, 435 (2020) (discussing "highly racialized" arguments in favor of water shutoffs in Detroit, which characterized Detroiters as undeserving of help because they are "thieving, criminal, and primitive").

³³⁷ Darren Lenard Hutchinson, "Continually Reminded of Their Inferior Position": *Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 76 (2014); see also Theodore R. Johnson, *How Punitive Excess Is a Manifestation of Racism in America*, BRENNAN CTR. FOR JUST. (Apr. 13, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-punitive-excess-manifestation-racism-america> [<https://perma.cc/EN8R-DBBY>] ("One need only catalog the experiences of racial and ethnic minorities to discern that if mass incarceration and punitive excess were abolished tomorrow, racial disparities would still exist in the range of socioeconomic factors that influence one's life chances and unduly expose people of color to punishment and whatever social penalties take the place of confinement."). As Angela Davis declared:

Prisons thus perform a feat of magic. Or rather the people who continually vote in new prison bonds and tacitly assent to a proliferating network of prisons and jails have been tricked into believing in the magic of imprisonment. But prisons do not disappear problems, they disappear human beings. And the practice of disappearing vast numbers of people from poor, immigrant, and racially marginalized communities has literally become big business.

Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, COLORLINES (Sept. 10, 1998), <https://colorlines.com/article/masked-racism-reflections-prison-industrial-complex/> [<https://perma.cc/72DD-9H7Z>].

³³⁸ Nicholas Eubank & Adriane Fresh, *Enfranchisement and Incarceration After the 1965 Voting Rights Act*, 116 AM. POL. SCI. REV. 791, 803 (2022).

³³⁹ *Id.*; see also Nikita Lalwani, *Making It Easier for Black People To Vote Had Unexpected Consequences*, WASH. POST (Nov. 11, 2022, 6:00 AM), <https://www.washingtonpost.com/politics/2022/11/11/vra-section-5-new-jim-crow/>.

³⁴⁰ See *supra* Section I.B.

As Marissa Jackson Sow questions, “In a society where all people are guaranteed equal rights under the law, are Black people really people at all?”³⁴¹ In *Whiteness as Contract*, Jackson Sow describes how white people structure the rules of access against, and to the exclusion of, Black people.³⁴² Accordingly, Jackson Sow explains that the social contract is one that Black people did not negotiate, but one that whiteness has imposed on them:

Constitutions and statutes give whiteness the force of law; however, the invisible law of whiteness, which was negotiated by the people who orchestrated political domination in the United States at its founding, now serves as a shadow Constitution. When it is not legally enforceable under public law, it may be legally enforceable under private ordering, or even physically enforceable via sanctioned means regardless of their illegality or obvious injustice.³⁴³

This Article has discussed many obvious injustices Black women and their families experience because of legally sustained and acceptable voter suppression schemes based on criminal convictions.³⁴⁴ Jackson Sow’s work takes this analysis a step further as she explains how advocating on a morality and humanity framework will not transform the systems Black women must navigate.³⁴⁵ The disenfranchisement maze preserves and benefits white families’ voting rights.³⁴⁶

Further, one researcher warned, “One important consequence of this legacy and continuing evolution of voting restrictions is unequal voter turnout in elections, with white Americans, and particularly affluent white Americans, out-participating people of color, low-income people, and young people by significant-to-wide margins.”³⁴⁷ The exclusion from the ballot box and the other collateral consequences of the criminalization of Black communities are no different.

³⁴¹ Jackson Sow, *supra* note 336, at 1836 (emphasis omitted).

³⁴² *See generally id.*

³⁴³ *Id.* at 1832.

³⁴⁴ *See supra* Section III.A.

³⁴⁵ Jackson Sow, *supra* note 336, at 1833 (“Seeking antiracist social transformation only on the basis that white supremacy is morally wrong makes little sense in the face of a social order for which racist economic exploitation and domination are expressed goals.”); *see also* India Thusi, Essay, *Blue Lives & the Permanence of Racism*, 105 CORNELL L. REV. ONLINE 14, 30 (2020) (“[E]vidence of racial injustice is not enough to promote meaningful change in this country.”).

³⁴⁶ Jackson Sow, *supra* note 336, at 1885 (“Because its *raison d’être* is the consolidation and domination of wealth and power, white racial contracting will continue until it is no longer profitable.”).

³⁴⁷ Sean McElwee, *Why Voting Matters: Large Disparities in Turnout Benefit the Donor Class*, DEMOS (Sept. 16, 2015), <https://www.demos.org/research/why-voting-matters-large-disparities-turnout-benefit-donor-class> [<https://perma.cc/VCD4-HGBR>]; *see also* Ava Ayers, *Voting as Exclusion*, 90 FORDHAM L. REV. 373, 389-92 (2021) (describing exclusionary nature of voting).

In fact, Stephanie E. Jones-Rogers, history professor and author of *They Were Her Property: White Women as Slave Owners in the American South*,³⁴⁸ found:

What begins in the colonial period is the emergence of a racially divided social order where whiteness has a value that being a woman just does not have . . . I see time and time again in my research that when white women are given a choice, they overwhelmingly choose to be empowered by whiteness and to embrace white supremacy.³⁴⁹

This racism is well illustrated by situations where those meant to administer and regulate the electoral process have admitted their white supremacy rationale.³⁵⁰ For example, when interviewed about people being removed from the voter rolls, one Oklahoma official “said that election officials ‘pretty well know’ who has been in trouble with the law,” and in answering another question, “used the term ‘sambo,’ a racist slur for African Americans.”³⁵¹ These attitudes and words sustain the racism inherent within voter suppression schemes.³⁵² Their words and deeds exemplify how the false image of political power for Black women and communities runs through these voter suppression schemes.

³⁴⁸ See generally Stephanie E. JONES-ROGERS, *THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVE OWNERS IN THE AMERICAN SOUTH* (2019).

³⁴⁹ Renée Graham, Opinion, *White Women Voters and the Dismantling of Democracy*, BOS. GLOBE (Nov. 4, 2021, 3:45 PM), <https://www.bostonglobe.com/2021/11/04/opinion/white-women-voters-dismantling-democracy>; see also GARCIA-HALLET, *supra* note 159, at 6 (“White mothers benefit from white privilege, in which their lives or the lives of their children literally do not depend on surviving racial oppression, as those of Black families do.”).

³⁵⁰ A 2014 federal report by the Presidential Commission on Election Administration explained, “The United States runs its elections unlike any other country in the world. Responsibility for elections is entrusted to local officials in approximately 8,000 different jurisdictions.” PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, *THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 1* (2014), <https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/466754/doc/slspublic/Amer%20Voting%20Experience%20draft%2001-04-14-1.pdf> [<https://perma.cc/6V9Z-5F43>]. Because of the expectation that local officials run federal and state elections, they “determine the quality of the voting experience” on issues that “can involve active—and disputed—interpretations of state law.” Richard Briffault, *Election Law Localism in the Time of COVID-19*, U. OF CHI. L. REV. ONLINE (June 26, 2020), <https://lawreviewblog.uchicago.edu/2020/06/26/election-law-localism-briffault> [<https://perma.cc/UAA7-XSJK>].

³⁵¹ WOOD & BLOOM, *supra* note 25, at 7-8.

³⁵² See Joshua S. Sellers, *Election Law and White Identity Politics*, 87 FORDHAM L. REV. 1515, 1532 (2019) (“[W]hite identity politics is more than just an aberrational feature of partisan politics; it is a recurrent, durable driver of political outcomes.”).

What we cannot imagine cannot come into being. A good definition marks our starting point and lets us know where we want to end up. As we move toward our desired destination we chart the journey, creating a map. We need a map to guide us on our journey. . . .

—bell hooks³⁵³

IV. ACCESSING THE VOTE

The elevation of racist and sexist views and white voter turnout has substantial outcomes on elections. For example, sociologists Christopher Uggen and Jeff Manza found that the exclusion of people with felony convictions from the ballot box in Florida influenced the outcome of the 2000 presidential election.³⁵⁴ In fact, the election would have resulted in the Democratic candidate, Al Gore, winning in Florida, and, thereby, becoming president, instead of the Republican George W. Bush ultimately becoming the forty-third president.³⁵⁵ Applying the same reasoning, had then Governor Rick Scott restored the voting rights of Floridians at the rate of his predecessor Governor Charlie Crist, the narrowly decided 2018 Florida gubernatorial election may have resulted in a defeat of Governor DeSantis by his Democratic opponent Andrew Gillum.³⁵⁶ Voter suppression due to convictions disregards the interests of those it excludes and influences the outcome of national, state, and local races.³⁵⁷

And those who endure the continuous practice of white social dominance are aware of its existence. As Rosemary McCoy reflected in a 2021 interview, “There’s only one purpose of taking your voting rights away from you, and that is so that you can be a slave. No one can change my mind about this . . . If a woman is a slave, her children and grandchildren are a slave.”³⁵⁸ Voter suppression schemes proliferated because of racism against Black people and a societal desire to demolish the voting rights Black men achieved after the Civil War. This original purpose does not diminish simply because policymakers have become less transparent and expanded the impact to Black women.³⁵⁹

³⁵³ BELL HOOKS, *ALL ABOUT LOVE: NEW VISIONS* 14 (1999).

³⁵⁴ See Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOCIO. REV. 777, 792-93 (2002).

³⁵⁵ *Id.*

³⁵⁶ Governor Crist restored the voting rights of 150,000 people over four years, but Governor Scott restored the vote of fewer than 2,900 individuals over eight years. *Id.* at 247. Governor DeSantis defeated Andrew Gillum by less than 32,500 votes. *November 6, 2018 General Election*, *supra* note 247 (Select “Governor and Cabinet” from “Select Office” drop-down menu to show gubernatorial election result data).

³⁵⁷ See Bianca Fortis, *How Tennessee Disenfranchised 21% of Its Black Citizens*, PROPUBLICA (Nov. 8, 2022, 5:00 AM), <https://www.propublica.org/article/tennessee-black-voters-disenfranchised> [<https://perma.cc/YRG9-N3GA>].

³⁵⁸ Bragg, *supra* note 305.

³⁵⁹ Angela Olivia Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child*

This Article has defined the problem at stake: current laws either permanently deny Black women with a history of convictions their vote or require them to survive incarceration, pay-to-vote schemes, waiting periods, and other critical roadblocks to regain their right to vote. The disenfranchisement maze is a continuation of historical attempts to limit Black women's interests and to restrain Black communities without accountability.

The journey to voting access for Black women and their communities' interests includes abolishing voter suppression based on criminal conviction. Critically, "[t]o safeguard a democratic future, it is possible and necessary to weave together the many and increasing strands of resistance to the prison industrial complex into a powerful movement for social transformation."³⁶⁰ Part of this democratic movement requires normative and legal changes. This Part proposes ways to move towards a destination that disbands the disenfranchisement maze and expands the vote to include Black women with criminal convictions.³⁶¹

A. *Unshackling Black Women's Humanity*

Society's image of Black women as the defenders of voting rights conflicts with Black women's inability to access the ballot box fully. Black women have put their faith in the promise of the ballot box even as those with political power have diminished Black women's voting interests.³⁶² Society needs to reckon with and reject this hypocrisy.

Protection from Family Well-Being, 11 COLUM. J. RACE & L. 639, 662 (2021) ("The concept of carcerality captures the ways in which white supremacy shapes and organizes society 'through policies and logic of control, surveillance, criminalization, and un-freedom. . . . The carceral state, and its punitive processes of criminalization and control, operate in highly discriminatory ways and have both produced and reinforced massive inequalities along lines of race, class, gender, sexuality, and other identity categories.'" (quoting Gabrielle French, Allie Goodman & Chloes Carlson, *What Is the Carceral State?*, UNIV. OF MICH. CARCERAL ST. PROJECT (May 2020), <https://storymaps.arcgis.com/stories/7ab5f5c3fbca46c38f0b2496bcaa5ab0> [<https://perma.cc/YF8J-STPP>])); Ciara Torres-Spelliscy, *Electoral Silver Linings After Shelby*, *Citizens United*, and *Bennett*, 16 BERKELEY J. AFR.-AM. L. & POL'Y 103, 108 (2015) (noting state "bad actors" have learned to avoid court review frequently when employing discriminatory practices in elections).

³⁶⁰ Davis, *supra* note 337.

³⁶¹ While this Section outlines paths toward greater electoral participation for Black women with criminal convictions, future scholarship will expand on these proposals more fully.

³⁶² See DANIELS, *supra* note 21, at 7 (critiquing United States for disenfranchising people in a democracy). Stacey Abrams and Nsé Ufot, for example, supported voting rights advocates and organizers and worked to register voters and increase get-out-the-vote efforts throughout Georgia to help support Democratic candidates in elections in 2020 and 2021. See *supra* note 12. While Abrams's efforts helped other candidates—including President Joe Biden and Senators Raphael G. Warnock and Jon Ossoff—win their elections, she lost her own 2022 run for governor of Georgia. See Kingsberry, *supra* note 76. Abrams's dedication to voting rights benefited other candidates but did not result in an electoral win for herself. Alexis Cubmie

To reverse the Black women tax, all individuals would have to consider Black women not as work mules, but as humans worthy of accessing the ballot box. Further, society must accept Black women with criminal convictions as human as well.³⁶³ To do so would require rejecting the racist and sexist caricatures of Black women that foster voting exclusion for Black women with criminal convictions and, instead, affirming Black women's membership in the United States' democracy.³⁶⁴

As Jackson Sow posited, a government that is "genuinely interested in divesting from predatory policies aimed at draining life, liberty, and property from Black people for the sake of white profit can do so; they need only divest from whiteness and invest in a new, actively antiracist social contract in which Black and Indigenous interests are centered."³⁶⁵ In the voting rights context, divesting from whiteness requires rejecting the continuous benefits white society receives from denying Black women the right to vote. It requires investing in organizations and movements that focus on supporting Black women and girls' access to the safety and security they continue to seek.³⁶⁶ Doing so will require sustained changes in the culture and norms that embody white supremacy and patriarchy.³⁶⁷

B. *Intersectionality Within Voting Rights Legal Analysis*

A critical element to changing the societal view of Black women as mules and ending the Black woman tax requires the law and judicial branch to apply the intersectionality framework properly.³⁶⁸ Judges would have to appreciate that

noted, "For another election season, Black women continue to be the backbone of the Democratic party, but not the face of it." *Id.*

³⁶³ In explaining his support for people voting while in prison, then Secretary of State of Maine Matthew Dunlap stated in 2019, "I'm not excusing the actions of anyone who winds up in prison. But they're still people, they're still human beings, they're still American citizens, and I think this is a process that should belong to every American citizen." Daniel Nichanian, "*A Sliver of Light*": Maine's Top Election Official on Voting from Prison, *APPEAL* (May 2, 2019), <https://theappeal.org/politicalreport/matthew-dunlap-on-voting-in-maine-interview> [<https://perma.cc/776B-EUHF>].

³⁶⁴ See Powell & Rich, *supra* note 18, at 120-25; Andre M. Perry, *To Protect Black Women and Save America from Itself, Elect Black Women*, *BROOKINGS* (July 2020), <https://www.brookings.edu/essay/to-protect-black-women-and-save-america-from-itself-elect-black-women> [<https://perma.cc/3VT5-FYQH>] (emphasizing Black women's lack of access to elected office and relegation to "second-class status" because they lack protection).

³⁶⁵ Jackson Sow, *supra* note 336, at 1887.

³⁶⁶ See Rodriguez, *supra* note 16 (explaining Black women vote for benefit of all); Bailey, *supra* note 16 (noting Black women's work for universal suffrage).

³⁶⁷ See RESMAA MENAKEM, *MY GRANDMOTHER'S HANDS: RACIALIZED TRAUMA AND THE PATHWAY TO MENDING OUR HEARTS AND BODIES* 262-65 (2021) (detailing necessary processes and actions white people must undergo to remove white supremacy as standard).

³⁶⁸ Some may claim that judges do not have the ability to hold these voter suppression schemes unconstitutional; they may argue that only the legislature has the authority to address the harms discussed in this Article. See *Richardson v. Ramirez*, 418 U.S. 24, 55 (1973)

Black women can face discrimination that is different from Black men and white women. Judicial analysis would have to view Black women holistically; Black women are not only part of a gender or a race but are part of a race and a gender.

In the lawsuit McCoy and Singleton filed against Governor DeSantis for violating the Fourteenth Amendment and Nineteenth Amendment rights of women of color in poverty, the district court judge noted that although the average woman with LFOs is more greatly impacted than the average man with LFOs, “the pay-to-vote requirement overall has a disparate impact on men, not women,” because more men have LFOs.³⁶⁹ The trial court seemed to agree that, at least on one important dimension, the LFO requirements disparately impacted women. Although the district court’s and the Eleventh Circuit’s holdings turned on whether courts should apply an intentionality and undue burden standard under the Nineteenth Amendment, the court missed a critical opportunity to support intersectional harms.³⁷⁰

C. *Mutual Aid Network*

While the prior proposals, accepting Black women as members of the collective and analyzing the law through an intersectional framework, focus on intangible goals, my third recommendation, the use of mutual aid, seeks to address the exclusion of Black women more directly. “Mutual aid” projects provide the resources members need to survive while also critiquing the systems that block access to the social safety net.³⁷¹ As Caitlyn Garcia and Cynthia

(mentioning arguments on negative impact these voter suppression schemes had on individuals and their being outdated before noting Court’s role was “not . . . to choose one set of values over the other” and stating legislature could abandon its voter suppression scheme). For an explanation on how judges can move away from supporting discriminatory laws, see generally Brandon Hasbrouck, *Movement Judges*, 93 N.Y.U. L. REV. 631 (2022). As a counter to the idea that judges are bound by precedent when state law supports discriminatory practices, Hasbrouck proposes that judges follow an “abolition constitutionalist interpretation of the Fourteenth and Fifteenth Amendments.” *Id.* at 693. Under abolition constitutionalism, “movement judges” must consider “the full constellation of laws in a discriminatory regime rather than viewing each piece unto itself and concluding that each *law* independently does not cross the line.” *Id.* Judges should follow the true goal of voting access for Black women and other individuals by holding the disenfranchisement maze unconstitutional overall. Finding these voter suppression schemes unconstitutional would align with an abolition constitutionalist interpretation. For example, in his dissenting opinion in *Ramirez*, Justice Thurgood Marshall explained that the goal of Section 2 of the Fourteenth Amendment was to punish southern states who refused to allow eligible Black voters to vote. *Ramirez*, 418 U.S. at 73-74 (Marshall, J., dissenting). Therefore, allowing these disenfranchisement mazes to exist keeps Black people from voting, which is the opposite purpose of the Fourteenth Amendment.

³⁶⁹ Jones v. DeSantis, 462 F. Supp. 3d 1196 (N.D. Fla.), *rev’d and vacated sub nom.* Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020), and *aff’d sub nom.* Jones v. Governor of Fla., 15 F.4th 1062 (11th Cir. 2021); *see also supra* Section II.C.

³⁷⁰ *See* Bragg, *supra* note 305.

³⁷¹ *See* DEAN SPADE, MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT) 97-238 (2020) (explaining key elements of mutual aid and communicating tips to avoid

Godsoe explain, “Mutual aid couples material resources with empowerment and community-building of those impacted by the system, in order to secure real harm reduction for children and families and transformative change across communities.”³⁷² Mutual aid meets people where they are and provides them, without shame or hoops to jump through, the services and support they need to navigate society successfully.³⁷³ Members of mutual aid projects work together to meet each other’s needs, instead of waiting for the government, nonprofits, or wealthy individuals to save them.³⁷⁴

In the context of the issues identified in this Article, mutual aid projects should be led by and focused on the needs of Black women who are directly impacted by criminal convictions.³⁷⁵ The projects may collect funds so that these Black women may address their financial needs with no strings attached. Additional projects may include paying Black women’s court fines, fees, and restitution; writing and sending letters to Black women who are incarcerated; bringing the children of Black mothers to family visits at jails and prisons; providing childcare so their mothers can attend school, work, or to other responsibilities; creating a job referral program; and offering stable and safe housing. These projects and others like it should “directly meet [Black women’s] survival needs and are based on a shared understanding that the conditions in which we are made to live are unjust.”³⁷⁶ Black women have endured the bias related to their race and gender for centuries and these local mutual aid projects would address some of the issues that have kept them from being able to pay court fines and fees, obtain stable housing, and access employment. These projects and their efforts will raise awareness of Black women’s inability to access the ballot box because of their convictions and discrimination. The community would come together not only to support the empowerment of Black women who have been disregarded by society, but also to address intersectional barriers.³⁷⁷

pitfalls of mutual aid communities); Joel Izlar, *What Is Mutual Aid?*, UNIV. OF GA. SCH. OF SOC. WORK, <https://ssw.uga.edu/news/article/what-is-mutual-aid-by-joel-izlar/> [<https://perma.cc/D2RG-MCSH>] (last visited Dec. 7, 2022).

³⁷² Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 COLUM. J. RACE & L. 601, 602 (2022) (proposing mutual aid model and divestment from punitive family regulation system to support families).

³⁷³ See SPADE, *supra* note 371, at 13.

³⁷⁴ TOOLKIT: MUTUAL AID 101, at 4 (2022), <https://cdn.cosmicjs.com/09a653b0-7545-11ea-be6b-9f10a20c6f68-Mutual-Aid-101-Toolkit.pdf> [<https://perma.cc/MY4V-ZNAX>].

³⁷⁵ SPADE, *supra* note 371, at 13 (“This work is based in a belief that those on the front lines of a crisis have the best wisdom to solve the problems, and that collective action is the way forward.”).

³⁷⁶ See Dean Spade, *Mutual Aid Is Essential to Our Survival Regardless of Who Is in the White House*, TRUTHOUT (Oct. 27, 2020), <https://truthout.org/articles/mutual-aid-is-essential-to-our-survival-regardless-of-who-is-in-the-white-house> [<https://perma.cc/M8XF-ZE2X>] (providing historical and present-day examples of mutual aid projects).

³⁷⁷ SPADE, *supra* note 371, at 15.

D. *State and Federal Initiatives*

A crucial element of mutual aid is the civic and communal responsibility to take part in political reform.³⁷⁸ While these mutual aid networks would focus on the survival needs of Black women with criminal histories, the networks would also work toward the systemic elimination of the disenfranchisement maze.³⁷⁹ Abolition of voter suppression based on convictions requires coalitions and strategies that target both state and federal reforms. Danielle Conway has emphasized, “Black women have consistently proven that their collective organizing, coalition-building, abolitionism, and contestation have been rooted in universal humanism, the support of their communities, and in the striving to expand the power and promise of the democratic ideal of equality for all.”³⁸⁰ Here, their efforts would focus on the critical need to push for broader elimination of voter suppression based on convictions through state laws and ballot initiatives, as well as federal laws and constitutional amendments.

Over the past ten years, some states have moved toward allowing more people with criminal convictions to vote,³⁸¹ but only the District of Columbia has dropped the disenfranchisement maze altogether in recent years.³⁸² In allowing all people who are convicted of criminal offenses the right to vote, Vermont, Maine, the District of Columbia, and the Commonwealth of Puerto Rico already recognize the importance of not banning anyone with a criminal record from the vote.³⁸³ These jurisdictions avoid the damage that occurs when people’s voting rights are restricted because of their criminal convictions. Pushing for a state-by-state movement would aim to dismantle the disenfranchisement maze.³⁸⁴

That said, the collective mutual aid networks and other coalitions should also work to address abolishing voter suppression schemes nationwide and, thereby, disenfranchisement by geography. With their efforts blocked in Florida and other states, voting rights advocates continue to aim for broader policy reform options. One measure, the For the People Act,³⁸⁵ was originally introduced in Congress in 2019 and would have granted people the right to vote after they completed their term of imprisonment, among other voter access provisions.³⁸⁶

³⁷⁸ *Id.*

³⁷⁹ *Id.* at 41 (explaining mutual aid “means intergroup coordination, the sharing of resources and information, having each other’s backs, and coming together in coalitions to take bigger actions”).

³⁸⁰ Conway, *supra* note 89, at 83.

³⁸¹ See *Historical Timeline: U.S. History of Felon Voting/Disenfranchisement*, *supra* note 123.

³⁸² See *50-State Comparison*, *supra* note 21.

³⁸³ See *id.*

³⁸⁴ See Nora V. Demleitner, *Criminal Disenfranchisement in State Constitutions: A Marker of Exclusion, Punitiveness, and Fragile Citizenship*, 26 LEWIS & CLARK L. REV. 531, 563 (2022).

³⁸⁵ For the People Act of 2021, H.R. 1, 117th Cong. §§ 1401-09 (2021).

³⁸⁶ *Id.* § 1403 (“The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has

While people still serving a sentence in jail or prison could not vote, millions of people around the country would have had access to the ballot box upon release.³⁸⁷ The unwritten sentence they served by being banned from voting and having to endure the disenfranchisement maze would no longer be in place. After expiring at the end of the 116th Congress, legislators filed the Act again in 2021 where it passed the House of Representatives but stalled in the Senate.³⁸⁸ At the time this Article was written, the For the People Act of 2021 is dead. Yet another door closed to people in the disenfranchisement maze, with Black women and their families left to navigate the consequences.

Although the For the People Act remains stalled in Congress, the ideas behind supporting more access to the ballot box nationwide have not. A more permanent means of abolishing the disenfranchisement maze would be to support the passage of a constitutional amendment protecting the right to vote for all.³⁸⁹ An affirmative and unequivocal right to vote, that includes people who are incarcerated, within the Constitution would require all jurisdictions to respect the participation of its members in the electoral process.

E. *Critiquing Voting Rights for All with Criminal Convictions*

All these proposals—shifting norms and stripping away stereotypes of Black women, embracing intersectionality in the law, taking practical actions, and engaging in lasting reform—would be critical to addressing the current exclusion of Black women from the ballot box. Importantly, while this Article critiques racism and sexism directed at Black women's votes and the use of the criminal legal system's continuing control, all people would benefit from dismantling the disenfranchisement maze.

While agreeing that the disenfranchisement maze is harmful, critics may argue that banning voter suppression based on criminal conviction altogether goes too far. They may claim that those who commit murder, sexual offense, crimes against the United States, or other criminal offenses do not deserve to take part in the political process. Supporters of a more restricted disenfranchisement maze may contend that the actions of individuals who

been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.”).

³⁸⁷ *See id.*

³⁸⁸ *All Actions H.R.1—117th Congress (2021-2022)*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1/all-actions?overview=closed#tabs> [<https://perma.cc/BKA7-J6YL>] (last visited Dec. 7, 2022).

³⁸⁹ *See generally* Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997) (discussing how changes in laws perpetuate race and gender discrimination). For examples of proposed constitutional amendments that would protect the right to vote for all, see Catharine A. MacKinnon & Kimberlé W. Crenshaw, *Reconstituting the Future: An Equality Amendment*, 129 YALE L.J.F. 343, 358-62 (2019); *Right To Vote Amendment*, FAIRVOTE, https://fairvote.org/archives/reform_library-right_to_vote_amendment/ [<https://perma.cc/237U-FA54>] (last visited Dec. 7, 2022).

commit certain crimes require punishment in the form of exclusion from the ballot.

This perspective, however, ignores how voter suppression due to convictions has controlled and limited Black women and so many other communities throughout history, as this Article proves. Selective application of voter suppression schemes supports the enslavement of another human being.³⁹⁰ Criminal convictions and the right to vote should be disentangled. Black women have led the effort for universal suffrage because, as Maya Angelou noted, “The truth is, no one of us can be free until everybody is free.”³⁹¹ Here, freedom from the disenfranchisement maze means the end of voter suppression schemes triggered by criminal convictions for all. It also means millions more people around the nation accessing the ballot box. To exclude certain groups of people—people in poverty, Black women, people convicted of murder or sexual offenses—would reinforce the discriminatory policies and practices that exist and work to marginalize individuals.³⁹²

Admittedly, allowing people to vote without regard to their criminal records will not stop all the voter suppression tactics states have implemented in recent years.³⁹³ Nonetheless, being able to vote is a crucial step in empowering Black women’s voting participation, as well as people of other demographic identities.

³⁹⁰ See Appellants’ Brief at 1, *Jones v. Governor of Fla.*, 15 F.4th 1062 (11th Cir. 2021) (No. 20-12304) (“[T]o take away [the right to vote] is to reduce a [person] to a state of slavery, for slavery consists in being subject to the will of another . . .” (alterations in original) (quoting PAINE, *supra* note 40, at 19)).

³⁹¹ Colleen Curry, *Maya Angelou’s Wisdom Distilled in 10 of Her Best Quotes*, ABC NEWS (May 28, 2014, 10:00 AM), <https://abcnews.go.com/Entertainment/maya-angelous-wisdom-distilled-10-best-quotes/story?id=23895284> [<https://perma.cc/C4HS-QER3>]; see also Audre Lorde, *Keynote Address: The NWSA Convention: The Uses of Anger*, in WOMEN’S STUD. Q., Fall 1981, at 7, 10 (“I am not free while any woman is unfree, even when her shackles are very different from my own. And I am not free as long as one person of Color remains chained. Nor is anyone of you.”).

³⁹² Dean Spade, *Their Laws Will Never Make Us Safer*, in AGAINST EQUALITY: PRISONS WILL NOT PROTECT YOU 4 (Ryan Conrad ed., 2012) (emphasizing racism and discrimination behind who gets arrested, convicted, and punished within legal systems).

³⁹³ See *Block the Vote: How Politicians Are Trying To Block Voters from the Ballot Box*, AM. C.L. UNION (Aug. 18, 2021), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020> [<https://perma.cc/PA6K-ABUR>] (analyzing legislative and constitutional measures states have engaged in to make voting more difficult, especially for “people of color, students, the elderly, and people with disabilities”).

When you create a situation where a people's history is erased, then that is an extreme form of violence. . . . That history of resistance is a threat to existing political order, and so it needs to be actively reclaimed.

—Rebecca Hall³⁹⁴

CONCLUSION

Should voter suppression schemes continue, legislators, executive leaders, and the judiciary will be sanctioning—with clear knowledge of the disenfranchisement mazes' roots and impact—continued discrimination against Black people, and Black women in particular. Although they have failed too many times before, the federal government and states must end all conviction disenfranchisement mazes. It is time to reverse Black women's removal from the electorate and address the systems and policies that suppress their ability to vote. While the federal and state governments and the public authorize discriminatory practices to gatekeep who gets to vote, communities suffer and must work tirelessly to access the right that others access easily.³⁹⁵ The right to vote should not depend on one's race, gender, wealth, location, or criminal record, and history must stop repeating itself.

When demanding the unequivocal support and action of white people in ending the lynching of Black people in 1901, Ida B. Wells-Barnett demanded “that the silence of concession be broken, and that truth, swift-winged and courageous, summon this nation to do its duty to exalt justice.”³⁹⁶ The same principle applies to dropping these unjust disenfranchisement mazes. Laws and systems must enable the full political power of all by dismantling voter suppression due to criminal convictions. Society must move closer to the change, square deal, truth, benefit, destination, and reclaiming Black women have been demanding for far too long.

³⁹⁴ Julianne McShane, *New Graphic Novel Reveals Black Women's Hidden Role in Slave Revolts*, NBC NEWS (Aug. 3, 2021, 3:18 PM), <https://www.nbcnews.com/news/nbcblk/new-graphic-novel-reveals-black-womens-hidden-role-slave-revolts-rcna1573> [<https://perma.cc/88NH-F4RR>].

³⁹⁵ See *supra* Part II.

³⁹⁶ Ida B. Wells Barnett, *Lynching and the Excuse for It*, 53 INDEPENDENT 1133, 1136 (1901), <https://digital.lib.niu.edu/islandora/object/niu-gildedage%3A24185> [<https://perma.cc/FCM3-C53Z>].