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## BLACK WOMEN AND VOTER SUPPRESSION

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### 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 Hamer<sup>1</sup>

#### 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.”<sup>2</sup> 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.<sup>3</sup>

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 worker<sup>4</sup> with the Fulton County Department of

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<sup>1</sup> 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).

<sup>2</sup> 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>].

<sup>3</sup> See *infra* Section I.B.

<sup>4</sup> 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.<sup>5</sup> 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.”<sup>6</sup> They value the right to vote.

The Select Committee to Investigate the January 6th Attack on the United States Capitol (“January 6th Committee”)<sup>7</sup> 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.’”<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> They risked their lives while attempting to protect the integrity of the election.<sup>11</sup>

From before the Women’s Suffrage Movement to present-day voting rights activists,<sup>12</sup> Black women have faced these racialized and gendered caricatures;

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“upended [election workers’] lives, fueling harassment and racist threats by claiming they were involved in voter fraud”).

<sup>5</sup> 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>.

<sup>6</sup> *Id.*

<sup>7</sup> *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).

<sup>8</sup> Gardner, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> 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.*

<sup>11</sup> *Id.*

<sup>12</sup> 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.”<sup>13</sup> 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.<sup>14</sup>

Commentators have described Black women as the “unsung heroes” of the right to vote.<sup>15</sup> Research has found that “Black women, regardless of location, age, or socioeconomic background, tend to vote for economically thriving, educated, healthy, and safe communities.”<sup>16</sup> Their justice-focused interests

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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>].

<sup>13</sup> 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”).

<sup>14</sup> 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).

<sup>15</sup> 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>].

<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> States across the nation ban people with convictions<sup>20</sup> from voting, unless they have met certain, often confusing, criteria.<sup>21</sup> States vary in the procedures people must follow to restore their right to vote.<sup>22</sup> Only Vermont, Maine, the District of Columbia, and the Commonwealth of Puerto Rico allow people to vote no matter their criminal history.<sup>23</sup>

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<sup>17</sup> 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.").

<sup>18</sup> 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).

<sup>19</sup> See *id.*

<sup>20</sup> 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://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 Felonry*, 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.").

<sup>21</sup> *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).

<sup>22</sup> *50-State Comparison*, *supra* note 21.

<sup>23</sup> *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,”<sup>24</sup> the disenfranchisement maze people must follow to regain or restore their voting rights amounts to voter suppression.<sup>25</sup> States may authorize the automatic restoration of a person’s voting rights, an application after a waiting period, or permanent disenfranchisement.<sup>26</sup> 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”),<sup>27</sup> or not at all.<sup>28</sup> These disenfranchisement mazes vary

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<sup>24</sup> 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.

<sup>25</sup> *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).

<sup>26</sup> *50-State Comparison*, *supra* note 21.

<sup>27</sup> 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).

<sup>28</sup> *50-State Comparison*, *supra* note 21.

across the United States, but they all amount to disenfranchisement by geography.<sup>29</sup>

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 Mason<sup>30</sup> and Pamela Moses<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> Given the disturbing rate of conviction and incarceration<sup>34</sup> of all women in the United States, but especially Black women,<sup>35</sup>

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<sup>29</sup> 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).

<sup>30</sup> 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].

<sup>31</sup> 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.

<sup>32</sup> 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).

<sup>33</sup> *Id.* at 8-11.

<sup>34</sup> In this Article, I use the term "incarceration" to describe confinement in local, state, federal, Native American, and military jail or prison facilities.

<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> It describes how voting disenfranchisement, a legacy of racist Jim Crow and sexist Jane Crow<sup>38</sup> 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

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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>].

<sup>36</sup> See *infra* Section III.A.

<sup>37</sup> 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.

<sup>38</sup> 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.<sup>39</sup> 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."<sup>40</sup> 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.<sup>41</sup>

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<sup>39</sup> 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.

<sup>40</sup> 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)).

<sup>41</sup> 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 Pierce<sup>42</sup>

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,<sup>43</sup> 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."<sup>44</sup> 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.<sup>45</sup>

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,<sup>46</sup> a period of government-sanctioned terror and discrimination by white people

<sup>42</sup> *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://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4384807/biographical-sketch-juno-frankie-pierce) [<https://perma.cc/5MW9-UCGG>].

<sup>43</sup> 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>].

<sup>44</sup> U.S. CONST. amend. XIX.

<sup>45</sup> *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).

<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> 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.<sup>50</sup> After heated discussions, the Tennessee legislature passed the Amendment.<sup>51</sup> Because Tennessee became the 36th state to pass the Nineteenth Amendment, women could celebrate their right to vote under the Constitution.<sup>52</sup> A victory for so many.<sup>53</sup>

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.

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<sup>47</sup> 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.").

<sup>48</sup> See *id.* at 560-62.

<sup>49</sup> 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).

<sup>50</sup> *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].

<sup>51</sup> *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.").

<sup>52</sup> *Tennessee and the 19th Amendment*, *supra* note 45.

<sup>53</sup> *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.<sup>54</sup> 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.<sup>55</sup> Society has yet to deem Black women worthy of consideration and justice.<sup>56</sup>

Scholars have analyzed and described the discrimination Black women face when elevating their desire for support within the United States.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup> 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.”<sup>60</sup>

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<sup>54</sup> 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.’”).

<sup>55</sup> 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].

<sup>56</sup> See *id.* (“Black women’s pain and suffering has become virtually invisible within the wider social discourse, protest movements and collective social consciousness.”).

<sup>57</sup> *Id.*; Powell & Rich, *supra* note 18, at 120-25.

<sup>58</sup> BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 6 (1981).

<sup>59</sup> 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).

<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> And Black women-led voting rights organizations, in particular, and women-of-color-led civic organizations overall, are under-resourced.<sup>63</sup> 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%.<sup>64</sup> Further, the income of Black women is considerably less than that of white men.<sup>65</sup> 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."<sup>66</sup> On too many fronts, Black women are left behind.<sup>67</sup>

<sup>61</sup> Powell & Rich, *supra* note 18, at 117-19.

<sup>62</sup> 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://www.aapf.org/_files/ugd/62e126_54d4f5a4634047fe894ec2db240cb487.pdf) [<https://perma.cc/JD7T-DWRH>].

<sup>63</sup> 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).

<sup>64</sup> *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).

<sup>65</sup> 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").

<sup>66</sup> THE PLIGHT OF BLACK GIRLS AND WOMEN, *supra* note 62, at 1.

<sup>67</sup> 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*.<sup>68</sup> In reviewing the experience of Black women and appreciating the Black women scholars who came before her,<sup>69</sup> 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.<sup>70</sup>

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.”<sup>71</sup>

Black feminist scholars and others have explored the intersectionality doctrine by analyzing the experience of Black women in the United States.<sup>72</sup> Scholars have since expanded intersectionality to other people with marginalized identities and applications.<sup>73</sup> 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.<sup>74</sup>

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<sup>68</sup> 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”).

<sup>69</sup> 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).

<sup>70</sup> 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>].

<sup>71</sup> JENNIFER C. NASH, *BLACK FEMINISM REIMAGINED: AFTER INTERSECTIONALITY* 40 (2019).

<sup>72</sup> 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).

<sup>73</sup> 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”).

<sup>74</sup> 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.<sup>75</sup> 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."<sup>76</sup>

B. *Historical Voting Exclusion for Black Women*

Delving deeper into U.S. history and politics shows how Black women, in particular,<sup>77</sup> 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.<sup>78</sup> Courts have made clear how important the right to vote is to the exercise of citizenship and civic engagement.<sup>79</sup> 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.<sup>80</sup> Yet, policymakers and the judiciary have ignored or actively suppressed Black women's right to vote, notwithstanding their efforts to access the ballot box.<sup>81</sup> This subsection summarizes how the legacy of Jim

<sup>75</sup> See *id.* at 18-20.

<sup>76</sup> 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").

<sup>77</sup> Jones & Norwood, *supra* note 59, 2026-30.

<sup>78</sup> See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-87 (1990).

<sup>79</sup> *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.").

<sup>80</sup> 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).

<sup>81</sup> 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.<sup>82</sup>

The combination of the Fifteenth Amendment of the Constitution, which was ratified in 1870 and gave Black men the right to vote,<sup>83</sup> and the Nineteenth Amendment, which outlawed policies that regulated voting based on gender,<sup>84</sup> 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.<sup>85</sup>

The exclusion of Black women from the ballot box is not a new development.<sup>86</sup> Since the nation's establishment, Black women have been denied the right to vote.<sup>87</sup> 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.<sup>88</sup> 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."<sup>89</sup>

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<sup>82</sup> 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>].

<sup>83</sup> 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.").

<sup>84</sup> U.S. CONST. amend. XIX.

<sup>85</sup> Yancy, *supra* note 55.

<sup>86</sup> 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).

<sup>87</sup> U.S. CONST. art. I, § 2; Quinn, *supra* note 86, at 1242-43.

<sup>88</sup> See Quinn, *supra* note 86, at 1242-43.

<sup>89</sup> 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.<sup>90</sup>

The history of the Nineteenth Amendment captures only one period of the ongoing struggle that Black women face to experience complete suffrage.<sup>91</sup> Nonetheless, Black women worked towards the Nineteenth Amendment's ratification.<sup>92</sup> Civil and voting rights activists like Ida B. Wells-Barnett,<sup>93</sup> Sojourner Truth,<sup>94</sup> and Josephine St. Pierre Ruffin<sup>95</sup> worked for women's right

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<sup>90</sup> 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").

<sup>91</sup> 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.").

<sup>92</sup> Serena Mayeri, *After Suffrage: The Unfinished Business of Feminist Legal Advocacy*, 129 YALE L.J.F. 512, 515 (2020).

<sup>93</sup> 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].

<sup>94</sup> 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)).

<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> In seeking support from Southern white women suffragists, Paul sought to keep Black women out of the march.<sup>98</sup> Nevertheless, Ida B. Wells-Barnett, members of the Delta Sigma Theta sorority, and other Black women suffragists participated in the march.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup>

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

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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.

<sup>96</sup> 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](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>].

<sup>97</sup> Walton, *supra* note 96.

<sup>98</sup> Blakemore, *supra* note 96 (noting Paul "quietly discouraged" Black women from participating in the procession).

<sup>99</sup> *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).

<sup>100</sup> *Suffrage Paraders*, 5 CRISIS 296, 296 (1913).

<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup>

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.<sup>105</sup> The executive, legislative, and judicial branches used their authority to implement racist voter suppression schemes to stop the Black community from voting.<sup>106</sup> 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

<sup>102</sup> *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).

<sup>103</sup> *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).

<sup>104</sup> *Ora Brown Stokes (1882-1957)*, *supra* note 102.

<sup>105</sup> 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.").

<sup>106</sup> 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.”<sup>107</sup> 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.<sup>108</sup>

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.<sup>109</sup> 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.”<sup>110</sup> 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.<sup>111</sup> 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.<sup>112</sup>

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<sup>107</sup> 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)).

<sup>108</sup> 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).

<sup>109</sup> *Ora Brown Stokes (1882-1957)*, *supra* note 102.

<sup>110</sup> *Id.*

<sup>111</sup> 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).

<sup>112</sup> 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."<sup>113</sup> 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.<sup>114</sup>

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.<sup>115</sup> The Voting Rights Act of 1965, in particular, was "widely regarded as one of the most successful pieces of civil

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/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](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").

<sup>113</sup> 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).

<sup>114</sup> 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].

<sup>115</sup> 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.”<sup>116</sup> Further, the Twenty-Fourth Amendment banned the use of poll taxes in federal elections in 1964,<sup>117</sup> and the Supreme Court made state poll taxes illegal in 1966.<sup>118</sup> 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.<sup>119</sup>

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.<sup>120</sup> For example, the Voting Rights Act and other civil rights legislation did not grant people with criminal convictions the ability to vote.<sup>121</sup>

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

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<sup>116</sup> 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).

<sup>117</sup> U.S. CONST. amend. XXIV.

<sup>118</sup> *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 684-86 (1966).

<sup>119</sup> 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”).

<sup>120</sup> 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).

<sup>121</sup> 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.”<sup>122</sup> 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.<sup>123</sup> Even after the Civil Rights Movement, white racists used the disenfranchisement maze as a “race neutral” way of suppressing the Black communities’ political participation.<sup>124</sup>

White racists did not hide their goal in implementing voter suppression schemes during the Jim Crow era.<sup>125</sup> 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.”<sup>126</sup> 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.”<sup>127</sup>

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.<sup>128</sup> Yet, in a 1974 Supreme Court case, *Richardson v. Ramirez*,<sup>129</sup> 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.<sup>130</sup> In its 6-3 opinion, the Court cited

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<sup>122</sup> 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.*

<sup>123</sup> 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).

<sup>124</sup> 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.”).

<sup>125</sup> See *id.* at 569-72 (displaying language from speeches given by legislators in support of disenfranchising Black men).

<sup>126</sup> *Id.* at 569.

<sup>127</sup> *Id.* at 571.

<sup>128</sup> U.S. CONST. amends. XIV, XV.

<sup>129</sup> 418 U.S. 24 (1974).

<sup>130</sup> *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 Amendment<sup>131</sup> to explain that these voter suppression schemes were “an affirmative sanction”<sup>132</sup> that Congress approved of in allowing states to disenfranchise people convicted of committing crimes.<sup>133</sup> Ultimately, the Court held that these voter suppression schemes did not violate the Equal Protection Clause of the Fourteenth Amendment.<sup>134</sup>

With the approval of the Supreme Court, state voter suppression schemes based on people’s history of conviction continued.<sup>135</sup> 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.<sup>136</sup>

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

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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.

<sup>131</sup> 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. . .”).

<sup>132</sup> *Ramirez*, 418 U.S. at 54.

<sup>133</sup> *Id.* at 42-46.

<sup>134</sup> *Id.* at 56.

<sup>135</sup> 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).

<sup>136</sup> Cammett, *supra* note 27, at 373 (footnotes omitted).

people from electoral participation.<sup>137</sup> As mass incarceration and convictions grew, Black men faced, and continue to face, the highest rates of incarceration and convictions in the country.<sup>138</sup> 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.<sup>139</sup> 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.<sup>140</sup>

### 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”<sup>141</sup> and the rate of arrest and incarceration of women has grown exponentially since then.<sup>142</sup> 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.”<sup>143</sup> Further, between 1866 and 1928, Black women

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<sup>137</sup> *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.”).

<sup>138</sup> 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>].

<sup>139</sup> See ALEXANDER, *supra* note 138, at 180 (“More [Black men] are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified.”).

<sup>140</sup> 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.”).

<sup>141</sup> 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)).

<sup>142</sup> 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>].

<sup>143</sup> 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.<sup>144</sup> In Georgia and other southern states during that period, Black women made up 99% of the women incarcerated in the prison and jail facilities.<sup>145</sup>

In the 1970s and onward, the tough-on-crime laws and the War on Drugs policing fueled the incarceration of Black women.<sup>146</sup> 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.”<sup>147</sup> Since the 1980s, the rate of incarceration of women has increased by over 475%,<sup>148</sup> with Black women being incarcerated at a disproportionately higher rate.<sup>149</sup> 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%.<sup>150</sup> 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.<sup>151</sup>

Michele Goodwin described the attack on Black women’s liberty as “the unyielding, state-sanctioned violence against Black women,”<sup>152</sup> the same terms

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<sup>144</sup> 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>.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> 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].

<sup>149</sup> See Laroche, *supra* note 32, at 9.

<sup>150</sup> 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].

<sup>151</sup> 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.

<sup>152</sup> 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.<sup>153</sup> 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.<sup>154</sup> The incarceration of women, especially Black women, “ignores the social and psychological forces that often underlie female offending.”<sup>155</sup> These factors include high rates of trauma, unaddressed mental health concerns, self-medication and substance use disorder, and poverty.<sup>156</sup> Further, the majority of the offenses that women are convicted of are drug- and property-related.<sup>157</sup>

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.<sup>158</sup> 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.<sup>159</sup> Accordingly, Jim Crow’s racist legacy impacts women’s right to vote immensely.

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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).

<sup>153</sup> JONES, *supra* note 17, at 11, 86 (describing different forms of violence and oppression Black women faced during enslavement).

<sup>154</sup> *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.”).

<sup>155</sup> 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>].

<sup>156</sup> *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://www.prisonpolicy.org/blog/2022/05/04/mothers_day) [<https://perma.cc/Y3W5-SGRJ>].

<sup>157</sup> 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).

<sup>158</sup> 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://nsuworks.nova.edu/fse_etd/347) [<https://perma.cc/V5A7-EBSD>].

<sup>159</sup> 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.<sup>160</sup> In states like Idaho and Oklahoma, which have the highest rates of incarceration of women,<sup>161</sup> Black women's right to vote is restored automatically after completion of any imposed period of incarceration, probation, or parole.<sup>162</sup> 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 McCoy<sup>163</sup>

## II. CHALLENGING THE DISENFRANCHISEMENT MAZE IN FLORIDA

Because of mass incarceration and racially motivated policing,<sup>164</sup> Black women have been banned from voting and have had to navigate the disenfranchisement maze while trying to address their communities' needs.<sup>165</sup> 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

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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).

<sup>160</sup> 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).

<sup>161</sup> 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].

<sup>162</sup> *Can People Convicted of a Felony Vote?*, *supra* note 29.

<sup>163</sup> 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].

<sup>164</sup> See generally SUSAN BURTON & CARI LYNN, BECOMING MS. BURTON: FROM PRISON TO RECOVERY TO LEADING THE FIGHT FOR INCARCERATED WOMEN (2019).

<sup>165</sup> 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.<sup>166</sup> Over a million Floridians still cannot vote because the state banned people with felony convictions, including Black women, from voting.<sup>167</sup> 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,<sup>168</sup> and its rate of incarceration of women is also higher than the national average.<sup>169</sup> 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.<sup>170</sup> Since its first constitution, enacted in 1838, Florida has banned the enfranchisement of people "convicted of bribery, perjury, or other infamous crime."<sup>171</sup> 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.<sup>172</sup> The state's 1865

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<sup>166</sup> 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.").

<sup>167</sup> *Id.*

<sup>168</sup> See *Florida Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/FL.html> [<https://perma.cc/J2UD-N93J>] (last visited Dec. 7, 2022).

<sup>169</sup> 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://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://www.prisonpolicy.org/reports/women_overtime.html) [<https://perma.cc/NTU4-7MSZ>].

<sup>170</sup> 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>].

<sup>171</sup> 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://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).

<sup>172</sup> WOOD, *supra* note 171, at 4.

constitution allowed only “free white males” to vote.<sup>173</sup> Then, in its 1868 constitution, officials worked to undermine the right to vote that the Fourteenth Amendment created for Black men.<sup>174</sup> 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.’”<sup>175</sup> These racist principles remain in the Florida constitution.

In 2018, the state constitutional voter suppression provision applied to any person convicted of a felony.<sup>176</sup> People were not allowed to access many of their civil rights, including registering to vote and running for political office.<sup>177</sup> 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.<sup>178</sup> 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.<sup>179</sup>

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.<sup>180</sup> In addition, litigation during Governor Bush’s tenure resulted in more individuals becoming eligible to vote.<sup>181</sup> In total, approximately

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 5.

<sup>175</sup> *Id.* (quoting *Johnson v. Governor of Fla.*, 353 F.3d 1287, 1296 (11th Cir. 2003), *vacated*, 377 F.3d 1163 (11th Cir. 2004)).

<sup>176</sup> 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).

<sup>177</sup> *Id.*

<sup>178</sup> FLA. CONST. art. IV, § 8(a) (1968).

<sup>179</sup> See WOOD, *supra* note 171, at 9.

<sup>180</sup> 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://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>].

<sup>181</sup> 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.<sup>182</sup>

His successor, Charlie Crist, served four years as governor of Florida. During his tenure, he authorized an automatic restoration process for certain convictions.<sup>183</sup> 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.<sup>184</sup>

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.<sup>185</sup> 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.<sup>186</sup> 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.<sup>187</sup> At that point, should the State Board decide that the applicants met the restoration requirements, the Governor

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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>].

<sup>182</sup> 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.

<sup>183</sup> 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://www.huffpost.com/entry/florida-felon-disenfranchisement-reform_n_5c33d3c6e4b01e2d51f5fb5f) [<https://perma.cc/D9AD-J35C>].

<sup>184</sup> Du Bose, *supra* note 182, at 246-47; FLA. RULES OF EXEC. CLEMENCY, *supra* note 183, at 9.

<sup>185</sup> 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.").

<sup>186</sup> 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).

<sup>187</sup> *Id.*

and the Florida Cabinet—the Attorney General, Chief Financial Officer, and Commissioner of Agriculture—considered people’s applications at public hearings.<sup>188</sup> Applicants waited years for their hearings.<sup>189</sup>

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.<sup>190</sup> 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,<sup>191</sup> as were his decisions.<sup>192</sup>

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.<sup>193</sup> He also asked applicants whether they regularly attend church.<sup>194</sup> 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.”<sup>195</sup> 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.<sup>196</sup>

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.<sup>197</sup> 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

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<sup>188</sup> *Id.*

<sup>189</sup> Du Bose, *supra* note 182, at 249.

<sup>190</sup> FLA. CONST. art. IV, § 8(a) (1968); 2011 CLEMENCY RULES, *supra* note 186, at 12.

<sup>191</sup> 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.”).

<sup>192</sup> See Ramadan et al., *supra* note 191.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> 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>.

<sup>197</sup> 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://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.<sup>198</sup>

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.<sup>199</sup> 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.<sup>200</sup> 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.<sup>201</sup>

Florida has different methods of amending its constitution, one of which is through a voter-led ballot initiative.<sup>202</sup> 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 voters<sup>203</sup> to complete a petition in support of placing the initiative on the ballot.<sup>204</sup> 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.<sup>205</sup> The Florida Supreme

<sup>198</sup> Du Bose, *supra* note 182, at 247.

<sup>199</sup> 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://papers.ssrn.com/sol3/papers.cfm?abstract_id=4090995#) [<https://perma.cc/NDZ9-XVM6>].

<sup>200</sup> Sukhatme et al., *supra* note 199 (manuscript at 14).

<sup>201</sup> *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).

<sup>202</sup> *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).

<sup>203</sup> 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").

<sup>204</sup> 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).

<sup>205</sup> *Id.* at 3.

Court receives the initiative language from the Attorney General and reviews the proposed language.<sup>206</sup> Should the proposed language survive the court's scrutiny, the ballot initiative proponents will continue collecting signed petitions.<sup>207</sup> Then, once it has received the threshold 8% of eligible voters, the Supervisor of Elections places the measure on the ballot.<sup>208</sup> To pass, at least 60% of people who vote in that election must vote in support of the state constitutional ballot initiative.<sup>209</sup>

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.<sup>210</sup> The Florida Rights Restoration Coalition ("FRRC"), led by Desmond Meade<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup>

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.<sup>214</sup> 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

<sup>206</sup> *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).

<sup>207</sup> See FLA. DIV. OF ELECTIONS, *supra* note 204, at 3.

<sup>208</sup> *Id.*

<sup>209</sup> FLA. CONST. art. XI, § 5(e).

<sup>210</sup> See Levine, *supra* note 197.

<sup>211</sup> 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).

<sup>212</sup> See generally FLA. RTS. RESTORATION COAL., *supra* note 199.

<sup>213</sup> 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).

<sup>214</sup> 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.<sup>215</sup>

FRRC and its partners used the idea of second chances to present Amendment 4's significance to voters.<sup>216</sup> 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.<sup>217</sup> Their sentence would include not only any term of incarceration, but, also, any period of parole and probation associated with the sentence.<sup>218</sup> 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.<sup>219</sup>

Almost 65% of voters supported the measure, surpassing the 60% threshold.<sup>220</sup> Amendment 4 is now in the Florida state constitution.<sup>221</sup> 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

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<sup>215</sup> *Id.*

<sup>216</sup> *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.").

<sup>217</sup> CONSTITUTIONAL AMENDMENT PETITION FORM, *supra* note 214, at 1.

<sup>218</sup> *Id.*

<sup>219</sup> *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://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.*

<sup>220</sup> *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).

<sup>221</sup> 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.<sup>222</sup>

As with other constitutional amendments and laws enacted to increase voting access, celebrations abounded.<sup>223</sup> 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.<sup>224</sup>

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.<sup>225</sup> 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

<sup>222</sup> *Id.*

<sup>223</sup> 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).

<sup>224</sup> 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://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").

<sup>225</sup> 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.<sup>226</sup> 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.<sup>227</sup>

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.<sup>228</sup> SB 7066 dictated that people's attempts to convert their LFOs in criminal cases to civil debts would not grant them voting eligibility.<sup>229</sup> Instead, people must still consider LFOs unpaid, even if they are no longer recorded under the criminal matter.<sup>230</sup>

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.<sup>231</sup> The Florida Department of Corrections estimated<sup>232</sup> that

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<sup>226</sup> 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://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.*

<sup>227</sup> 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).

<sup>228</sup> 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).

<sup>229</sup> 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.”).

<sup>230</sup> *Id.*

<sup>231</sup> 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).

<sup>232</sup> 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.<sup>233</sup> With an average monthly income of \$1,559.00, the ability to pay off LFOs is highly unlikely.<sup>234</sup> LFO requirements disproportionately harm Black women with criminal convictions.<sup>235</sup> 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.<sup>236</sup>

Black women also report that any income they did earn, they spent on their families’ and their needs.<sup>237</sup> 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.<sup>238</sup> 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.<sup>239</sup>

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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.

<sup>233</sup> 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://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.

<sup>234</sup> *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.”).

<sup>235</sup> *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>].

<sup>236</sup> *Id.*

<sup>237</sup> Winter & Wegman, *supra* note 228.

<sup>238</sup> *Id.*

<sup>239</sup> *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.<sup>240</sup> 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.<sup>241</sup> Other sources estimated that SB 7066 disenfranchised a higher amount of people—approximately 700,000 people.<sup>242</sup> These individuals would have been eligible to vote after Amendment 4's passage without SB 7066.<sup>243</sup>

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.<sup>244</sup> When he did so, Governor DeSantis also sent Florida Secretary of State Laurel Lee a transmittal letter outlining his issues with the new law.<sup>245</sup> 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.<sup>246</sup> Even though 49.6% of voters elected him governor in the November 2018 election,<sup>247</sup> he assessed, without citing any data, that the

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<sup>240</sup> 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].

<sup>241</sup> *Id.*

<sup>242</sup> *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).

<sup>243</sup> Memorandum from Simon & Mauer, *supra* note 240, at 2.

<sup>244</sup> 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).

<sup>245</sup> Letter from Ron DeSantis, *supra* note 244, at 1.

<sup>246</sup> *Id.*

<sup>247</sup> *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.<sup>248</sup>

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.<sup>249</sup> 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.<sup>250</sup> 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.<sup>251</sup>

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.<sup>252</sup> After SB 7066, recognizing the disparate impact pay-to-vote laws have on women of color,<sup>253</sup> 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.<sup>254</sup> Based on the Fourteenth

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<sup>248</sup> *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).

<sup>249</sup> See Letter from Ron DeSantis, *supra* note 244, at 1.

<sup>250</sup> 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.").

<sup>251</sup> See Laroche, *supra* note 170.

<sup>252</sup> 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).

<sup>253</sup> *Couloute & Kopf*, *supra* note 235 (explaining Black women with felonies have higher rate of unemployment than white women, white men, and Black men).

<sup>254</sup> 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.<sup>255</sup> 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.<sup>256</sup> 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.<sup>257</sup> 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.<sup>258</sup> 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.<sup>259</sup> 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.<sup>260</sup> The court imposed \$666 in fees and \$6,400 in restitution.<sup>261</sup> When McCoy was released, she lived with her daughter, was unemployed, and was unable to pay these LFOs.<sup>262</sup> At the time of the trial, McCoy owed \$7,806.72 in restitution and interest, which she could not afford to pay.<sup>263</sup>

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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.

<sup>255</sup> First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 6.

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at 26-28.

<sup>258</sup> *Id.* at 7.

<sup>259</sup> 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).

<sup>260</sup> First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 5.

<sup>261</sup> *Jones*, 462 F. Supp. 3d at 1211.

<sup>262</sup> See Transcript of Videoconferencing Proceeding Bench Trial Day 4, *supra* note 252, at 751.

<sup>263</sup> *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.<sup>264</sup> The district court judge, Judge Robert Lewis Hinkle, revealed the discrepancies with the amounts Singleton owed.<sup>265</sup> 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.<sup>266</sup> 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."<sup>267</sup> Further, Singleton testified that she could only pay \$50 per month towards paying her LFOs.<sup>268</sup> With that type of payment plan, Singleton estimated that she would not pay off her LFOs for approximately twenty-one to twenty-six years.<sup>269</sup>

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.<sup>270</sup> Unfortunately, the evidence and arguments McCoy and Singleton presented at trial did not convince Judge Hinkle fully.<sup>271</sup>

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a party to the lawsuit and that, because of her disability and criminal conviction history, she would have limited options. *Id.* at 757.

<sup>264</sup> First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 254, at 7.

<sup>265</sup> *See Jones*, 462 F. Supp. 3d at 1211.

<sup>266</sup> *Id.*

<sup>267</sup> *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.

<sup>268</sup> Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 680.

<sup>269</sup> *Id.*

<sup>270</sup> *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).

<sup>271</sup> *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.<sup>272</sup> He, however, found that the law did not violate women of color's rights to vote under the Nineteenth Amendment.<sup>273</sup> Judge Hinkle entered a permanent injunction against the enforcement of SB 7066.<sup>274</sup> 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.<sup>275</sup> In addition, Judge Hinkle reasoned that because more men had felony convictions and LFOs than women, women did not face a larger disparate impact.<sup>276</sup>

The state appealed the district court's decision to the Eleventh Circuit Court of Appeals, arguing that SB 7066 did not violate the Constitution.<sup>277</sup> In July 2020, the Eleventh Circuit stayed the district court's permanent injunction while the appeal was pending.<sup>278</sup> Advocates argued this decision created particular confusion as the 2018 election registration deadline approached.<sup>279</sup> 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.<sup>280</sup> In reversing Judge Hinkle's opinion, the majority held that SB 7066 violated neither the Fourteenth nor Twenty-Fourth Amendments.<sup>281</sup>

McCoy and Singleton had also appealed Judge Hinkle's holding that SB 7066 did not violate the voting rights of women of color.<sup>282</sup> A three-judge Eleventh

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<sup>272</sup> *Jones*, 462 F. Supp. 3d at 1234.

<sup>273</sup> *Id.* at 1239-40.

<sup>274</sup> *Id.* at 1250.

<sup>275</sup> *Id.* at 1239-40.

<sup>276</sup> *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.").

<sup>277</sup> *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1028 (11th Cir. 2020).

<sup>278</sup> *McCoy v. Governor of Fla.*, No. 20-12003, 2020 WL 4012843, at \*1 (11th Cir. July 1, 2020).

<sup>279</sup> 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).

<sup>280</sup> *Jones*, 975 F.3d at 1058-59.

<sup>281</sup> *Id.* at 1016-17, 1028. Judges Martin, Jordan, and Pryor filed three dissenting opinions.

<sup>282</sup> 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.<sup>283</sup> 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.<sup>284</sup>

As McCoy and Singleton expressed, "Our power evaporated, simply because we cannot pay thousands of dollars."<sup>285</sup> 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.<sup>286</sup> 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-Barnett<sup>287</sup>

### 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.<sup>288</sup> 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.

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McCoy and Singleton did not premise appeal on argument they satisfied discriminatory intent requirement).

<sup>283</sup> *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).

<sup>284</sup> *See Jones*, 15 F.4th at 1068.

<sup>285</sup> McCoy & Singleton, *supra* note 223.

<sup>286</sup> *See supra* Part I.

<sup>287</sup> 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>].

<sup>288</sup> *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.<sup>289</sup>

In general, increased entanglement within the criminal legal system leads to countless collateral consequences of convictions that Black women must navigate.<sup>290</sup> 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.<sup>291</sup> 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.<sup>292</sup> 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.<sup>293</sup>

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."<sup>294</sup> Further, these voter suppression schemes keep Black women from voting out the officials and judges who continue these racist and sexist policies.<sup>295</sup> And when individuals try to mobilize their electoral power while incarcerated, officials punish their efforts with more voter suppression.<sup>296</sup>

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<sup>289</sup> See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2085-86 (2017).

<sup>290</sup> See Laroche, *supra* note 32, at 543-48.

<sup>291</sup> See *supra* Section I.A.

<sup>292</sup> 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.

<sup>293</sup> See Rodriguez, *supra* note 30.

<sup>294</sup> 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://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.").

<sup>295</sup> 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).

<sup>296</sup> 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.<sup>297</sup> 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."<sup>298</sup> 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.<sup>299</sup> Policymakers view their priorities as less significant.<sup>300</sup> 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."<sup>301</sup> 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.<sup>302</sup> Ultimately, the disenfranchisement maze feeds upon Black women's overall marginalization to vanquish their potential votes and success.<sup>303</sup>

Not only are Black women's own interests devalued, but the disenfranchisement maze causes the suppression of Black families' rights and interests as well.<sup>304</sup> 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."<sup>305</sup> As McCoy's explanation affirms, many people seek to vote with a focus on the needs of more people than themselves alone;

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<sup>297</sup> MANZA & UGGEN, *supra* note 24, at 133.

<sup>298</sup> *Id.*

<sup>299</sup> See BURCH, *supra* note 107, at 11.

<sup>300</sup> *Id.* at 3 ("Politicians and political parties face disincentives to mobilize participation among people with felony convictions.").

<sup>301</sup> McCoy & Singleton, *supra* note 223.

<sup>302</sup> BURCH, *supra* note 107, at 30.

<sup>303</sup> See Laroche, *supra* note 32, at 547-48.

<sup>304</sup> 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.").

<sup>305</sup> 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.<sup>306</sup>

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.<sup>307</sup> In the United States, at least 5.1 million children have a parent who is incarcerated or formerly incarcerated.<sup>308</sup> 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.<sup>309</sup> 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.<sup>310</sup> 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.<sup>311</sup> 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.<sup>312</sup> As one source reported,

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<sup>306</sup> 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.

<sup>307</sup> SENT'G PROJECT, INCARCERATED WOMEN AND GIRLS, *supra* note 35, at 1.

<sup>308</sup> 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).

<sup>309</sup> 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).

<sup>310</sup> 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).

<sup>311</sup> 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).

<sup>312</sup> 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.”<sup>313</sup>

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.<sup>314</sup> 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.<sup>315</sup>

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.<sup>316</sup> 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.<sup>317</sup>

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/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://www.huffpost.com/entry/ron-desantis-florida-former-ex-felon-voter-fraud-arrests_n_635c084ae4b0cf522df862a8?j2p) [https://perma.cc/GB8B-BHL4].

<sup>313</sup> 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)).

<sup>314</sup> 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.

<sup>315</sup> Transcript of Videoconferencing Proceeding Bench Trial Day 3, *supra* note 259, at 686.

<sup>316</sup> 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)).

<sup>317</sup> 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.<sup>318</sup> 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.<sup>319</sup>

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.<sup>320</sup> 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.<sup>321</sup> 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.<sup>322</sup> To endure legal estrangement is to recognize that society neither appreciates nor desires the value their votes should offer.<sup>323</sup>

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<sup>318</sup> 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.

<sup>319</sup> 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>].

<sup>320</sup> 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.”).

<sup>321</sup> 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.”).

<sup>322</sup> 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.*

<sup>323</sup> 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.<sup>324</sup> 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.<sup>325</sup>

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.<sup>326</sup> "The United States is the only Western democracy that permits the permanent denial of voting rights for individuals with felony convictions."<sup>327</sup>

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.<sup>328</sup> Individuals

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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>].

<sup>324</sup> McCoy & Singleton, *supra* note 223.

<sup>325</sup> 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).

<sup>326</sup> 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).

<sup>327</sup> 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](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).

<sup>328</sup> *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.<sup>329</sup> Under the punishment theory, the disenfranchisement maze should be an additional price one pays for being convicted of a crime.<sup>330</sup> 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.<sup>331</sup> As for the election-integrity protection theory, adherents do not want someone who committed a crime to be able to influence policies by voting.<sup>332</sup> Yet researchers have found that many “lay persons in favor of criminal disenfranchisement laws . . . have a hard time articulating exactly why” they believe so.<sup>333</sup>

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.<sup>334</sup> One researcher found

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<sup>329</sup> 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).

<sup>330</sup> *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.”).

<sup>331</sup> 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.

<sup>332</sup> 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.

<sup>333</sup> 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).

<sup>334</sup> 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://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.<sup>335</sup> For these individuals, the association between criminality and Blackness leads to erasing people's right to vote.<sup>336</sup> 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."<sup>337</sup>

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.<sup>338</sup> 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.<sup>339</sup> A law hailed as a successful method of enhancing Black voting rights<sup>340</sup> was also a source of fear for white people that led to the imprisonment of Black people to limit their political power.

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8LFG] (finding increased levels of racial animus correlated with decreased support for enfranchisement of citizens convicted of felony).

<sup>335</sup> *Id.* at 12-13.

<sup>336</sup> 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").

<sup>337</sup> 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>].

<sup>338</sup> Nicholas Eubank & Adriane Fresh, *Enfranchisement and Incarceration After the 1965 Voting Rights Act*, 116 AM. POL. SCI. REV. 791, 803 (2022).

<sup>339</sup> *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/>.

<sup>340</sup> 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?”<sup>341</sup> In *Whiteness as Contract*, Jackson Sow describes how white people structure the rules of access against, and to the exclusion of, Black people.<sup>342</sup> 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.<sup>343</sup>

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.<sup>344</sup> 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.<sup>345</sup> The disenfranchisement maze preserves and benefits white families’ voting rights.<sup>346</sup>

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.”<sup>347</sup> The exclusion from the ballot box and the other collateral consequences of the criminalization of Black communities are no different.

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<sup>341</sup> Jackson Sow, *supra* note 336, at 1836 (emphasis omitted).

<sup>342</sup> *See generally id.*

<sup>343</sup> *Id.* at 1832.

<sup>344</sup> *See supra* Section III.A.

<sup>345</sup> 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.”).

<sup>346</sup> 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.”).

<sup>347</sup> 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*,<sup>348</sup> 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.<sup>349</sup>

This racism is well illustrated by situations where those meant to administer and regulate the electoral process have admitted their white supremacy rationale.<sup>350</sup> 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.”<sup>351</sup> These attitudes and words sustain the racism inherent within voter suppression schemes.<sup>352</sup> Their words and deeds exemplify how the false image of political power for Black women and communities runs through these voter suppression schemes.

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<sup>348</sup> See generally Stephanie E. JONES-ROGERS, *THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVE OWNERS IN THE AMERICAN SOUTH* (2019).

<sup>349</sup> 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.”).

<sup>350</sup> 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>].

<sup>351</sup> WOOD & BLOOM, *supra* note 25, at 7-8.

<sup>352</sup> 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 hooks<sup>353</sup>

#### 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.<sup>354</sup> 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.<sup>355</sup> 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.<sup>356</sup> Voter suppression due to convictions disregards the interests of those it excludes and influences the outcome of national, state, and local races.<sup>357</sup>

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.”<sup>358</sup> 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.<sup>359</sup>

<sup>353</sup> BELL HOOKS, *ALL ABOUT LOVE: NEW VISIONS* 14 (1999).

<sup>354</sup> See Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOCIO. REV. 777, 792-93 (2002).

<sup>355</sup> *Id.*

<sup>356</sup> 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).

<sup>357</sup> 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>].

<sup>358</sup> Bragg, *supra* note 305.

<sup>359</sup> 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."<sup>360</sup> 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.<sup>361</sup>

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.<sup>362</sup> Society needs to reckon with and reject this hypocrisy.

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*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).

<sup>360</sup> Davis, *supra* note 337.

<sup>361</sup> While this Section outlines paths toward greater electoral participation for Black women with criminal convictions, future scholarship will expand on these proposals more fully.

<sup>362</sup> 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.<sup>363</sup> 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.<sup>364</sup>

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."<sup>365</sup> 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.<sup>366</sup> Doing so will require sustained changes in the culture and norms that embody white supremacy and patriarchy.<sup>367</sup>

#### 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.<sup>368</sup> Judges would have to appreciate that

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noted, "For another election season, Black women continue to be the backbone of the Democratic party, but not the face of it." *Id.*

<sup>363</sup> 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>].

<sup>364</sup> 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).

<sup>365</sup> Jackson Sow, *supra* note 336, at 1887.

<sup>366</sup> 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).

<sup>367</sup> 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).

<sup>368</sup> 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.<sup>369</sup> 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.<sup>370</sup>

### 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.<sup>371</sup> As Caitlyn Garcia and Cynthia

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(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.

<sup>369</sup> 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.

<sup>370</sup> *See* Bragg, *supra* note 305.

<sup>371</sup> *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.”<sup>372</sup> 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.<sup>373</sup> 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.<sup>374</sup>

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.<sup>375</sup> 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.”<sup>376</sup> 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.<sup>377</sup>

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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).

<sup>372</sup> 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).

<sup>373</sup> See SPADE, *supra* note 371, at 13.

<sup>374</sup> 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>].

<sup>375</sup> 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.”).

<sup>376</sup> 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).

<sup>377</sup> 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.<sup>378</sup> 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.<sup>379</sup> 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.”<sup>380</sup> 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,<sup>381</sup> but only the District of Columbia has dropped the disenfranchisement maze altogether in recent years.<sup>382</sup> 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.<sup>383</sup> 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.<sup>384</sup>

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,<sup>385</sup> 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.<sup>386</sup>

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<sup>378</sup> *Id.*

<sup>379</sup> *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”).

<sup>380</sup> Conway, *supra* note 89, at 83.

<sup>381</sup> See *Historical Timeline: U.S. History of Felon Voting/Disenfranchisement*, *supra* note 123.

<sup>382</sup> See *50-State Comparison*, *supra* note 21.

<sup>383</sup> See *id.*

<sup>384</sup> 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).

<sup>385</sup> For the People Act of 2021, H.R. 1, 117th Cong. §§ 1401-09 (2021).

<sup>386</sup> *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.<sup>387</sup> 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.<sup>388</sup> 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.<sup>389</sup> 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

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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.”).

<sup>387</sup> *See id.*

<sup>388</sup> *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).

<sup>389</sup> *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://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.<sup>390</sup> 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.”<sup>391</sup> 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.<sup>392</sup>

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.<sup>393</sup> Nonetheless, being able to vote is a crucial step in empowering Black women’s voting participation, as well as people of other demographic identities.

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<sup>390</sup> 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)).

<sup>391</sup> 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.”).

<sup>392</sup> 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).

<sup>393</sup> 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 Hall<sup>394</sup>

#### 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.<sup>395</sup> 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.”<sup>396</sup> 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.

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<sup>394</sup> 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>].

<sup>395</sup> See *supra* Part II.

<sup>396</sup> 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>].