

Voter Emancipation in Slavery's Afterlife

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ABSTRACT

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

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

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INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰ KNOWLES, *supra* note 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁵ Akbar, *supra* note 24, at 2563.

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

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

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

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

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

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

I. BLACK WOMEN IN SLAVERY & ITS INCARCERATION AFTERLIFE

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

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

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

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

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

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

³⁴ Laroche, *supra* note 28, at 2447.

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

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

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

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

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

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

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

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

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

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

A. *Black Women’s Experiences*

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

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

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

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

⁴² HARTMAN, *supra* note 22, at 12.

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

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

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

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

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

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

⁴⁷ *Id.* at 673.

⁴⁸ *Id.* at 675.

⁴⁹ *Id.* at 676.

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

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

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

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

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

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

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

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

⁵³ *Id.* at 2021–22.

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

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

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

⁵⁷ Laroche, *supra* note 28, at 2431.

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

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

As Hartman explained:

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

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

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

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

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

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

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

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

B. *Slavery's Gendered Violence*

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

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

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

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

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

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

⁶⁶ *Id.* at 6.

⁶⁷ *Id.* at 11.

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

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

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

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

⁷⁰ *Id.* at 7.

⁷¹ *Id.*

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

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

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

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

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

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

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

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

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

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

⁷⁹ *Id.*

⁸⁰ *Id.*

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

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

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

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

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

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

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

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

⁸⁶ *Amy*, 24 F. Cas. at 809.

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

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

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

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

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

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

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

⁹² *Id.* at 266.

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

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

C. *Voter Exclusion in the Afterlife*

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

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

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

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

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

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

⁹⁷ See ALEXANDER, *supra* note 50.

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁵ *Id.* at 13.

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

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

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

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

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

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

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

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

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

¹¹³ Bell, *supra* note 112, at 2066.

¹¹⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

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

¹²⁰ Herwick, *supra* note 118.

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

¹²² Herwick, *supra* note 118.

¹²³ *Id.*

¹²⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

¹³¹ *Id.*

¹³² *Id.*

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

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

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

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

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

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

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

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

¹³⁸ *Id.*

¹³⁹ *Id.*

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

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

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

¹⁴¹ See *infra* Part II.C.

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

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

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

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

¹⁴⁶ HARTMAN, *supra* note 22, at 9.

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

II. BLACK WOMEN'S RESISTANCE

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

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

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

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

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

A. *Defining Emancipation & Everyday Resistance*

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

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

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

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

¹⁵⁰ TAYLOR, *supra* note 69, at 7.

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

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

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

¹⁵⁴ See *id.*

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

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

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

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

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

¹⁵⁶ HARTMAN, *supra* note 22, at 13.

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

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

¹⁵⁹ HARTMAN, *supra* note 22, at 6.

¹⁶⁰ *Id.*

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

¹⁶² *Id.* at 6.

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

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

B. *Proactive Resistance*

Proactive resistance reflects efforts by Black women to engage in the “everyday practice” of resistance through the courts and political action on their own volition. They identify means through which

¹⁶³ *Id.* at 7–8.

¹⁶⁴ *Id.* at 7–8 (“An expansive register of minor gestures, ways of sustaining and creating life, caring for one another, undoing slavery by small acts of stealth and destruction, communal dreaming, sacred transport, redress, and faith in a power greater than master and nation made it possible to survive the unbearable while never acceding to it.”); CAMP, *supra* note 15, at 3.

¹⁶⁵ HARTMAN, *supra* note 22, at 7.

¹⁶⁶ *Id.* at 50; see also Sarah Riley Case, *To Protest for Black Life during the Pandemic: Resistance and Freedom in a Settler State*, 38 CANADIAN J.L. & SOC’Y 316, 318–19 (2023) [<https://doi.org/10.1017/cls.2023.24>].

¹⁶⁷ While I describe the proactive and reactive acts by Black women seeking freedom and to vote, I also recognize that there were actions Black women took that were never recorded or preserved. Hartman described the power of the archive and what it misses when it ignores the reality of Black people. HARTMAN, *supra* note 22, at 12. Black women’s experiences are often part of this unrecognized or misinterpreted history. Morgan Jerkins, *Sold Back into Slavery, She Sued for Restitution—and Won*, MEDIUM (Aug. 26, 2019), <https://zora.medium.com/sold-back-into-slavery-she-sued-for-restitution-and-won-ba5a21c8c53a> (quoting historian W. Caleb McDaniel’s statement, “Unfortunately, sources about Black women’s lives in the [nineteenth] century face an uphill battle for survival and archives. In many cases, it’s difficult to reconstruct what happened.”).

oppression is operationalized, and thus slavery reimposed, and they seek to address them. These women work to address injustice and toward emancipation in strategic and purposeful ways. A proactive resistor's work is not accidental; it is intentional. They choose to assert their right to be heard for their just causes. Their acts of resistance may include serving as a plaintiff in a lawsuit, leading community building and collective action, and running for political office with the goal of alleviating harm. And within the proactive class is the highest form of legal resistance: those seeking to reshape the law through political work. Their efforts consist of not only using the law to protect their rights but also defining those laws and rights through politics and elections. In this subsection, I will describe two proactive resisters—Elizabeth Freeman and Pamela Moses—to provide further context for this type of resistance.

Elizabeth Freeman¹⁶⁸ was the first enslaved Black woman to obtain her freedom under the Massachusetts's constitution through a freedom suit, *Brom and Bett v. J. Ashley, Esq.*¹⁶⁹ Ms. Freeman¹⁷⁰ spent many years enslaved in the home of John Ashley of Sheffield.¹⁷¹ John Ashley was a colonel, local judge, and well-known person in the state,¹⁷²

¹⁶⁸ As with many of the Black women who resisted and did not have direct access to publishers, other individuals documented Ms. Freeman's purported life and beliefs. *Who is Elizabeth Freeman?*, DIGICATION, <https://oxford-emory.digication.com/elizabeth-freeman/home> (last visited July 13, 2025) ("Because Freeman never learned how to read or write, her life story was told through secondhand narrative which can make it difficult to know what she was thinking and what motivated her to make the decisions she did.").

¹⁶⁹ *Brom & Bett vs. J. Ashley Esq. (1781)*, EDUCATING FOR AM. DEMOCRACY (2023), <https://www.educatingforamericandemocracy.org/primary-source/brom-bett-vs-j-ashley-esq-1781> (last visited July 24, 2025); Alexandra "Mac" Taylor, *Elizabeth Freeman, Her Case for Freedom, and the Massachusetts Constitution*, NAT'L CONST. CTR. (Apr. 13, 2021), <https://constitutioncenter.org/blog/elizabeth-freeman-her-case-for-freedom-and-the-massachusetts-constitution>; Joshua J. Shroeder, *Leviathan Goes to Washington: How to Assert the Separation of Power in Defense of Future Generations*, 15 FLA. A&M U. L. REV. 1, 20–21 (2021) [<https://doi.org/10.2139/ssrn.3707727>]; Kerri Lee Alexander, *Elizabeth Freeman*, NAT'L WOMEN'S HIST. MUSEUM (2019), www.womenshistory.org/education-resources/biographies/elizabeth-freeman (last visited July 13, 2025).

¹⁷⁰ Ms. Freeman's name was "Mum Bett" while she was enslaved. She changed her name to "Elizabeth Freeman" upon obtaining her freedom. Alexander, *supra* note 169.

¹⁷¹ *Massachusetts Constitution and the Abolition of Slavery*, MASS.GOV, <https://www.mass.gov/guides/massachusetts-constitution-and-the-abolition-of-slavery> (last visited Sept. 6, 2024).

¹⁷² *Id.*

and his wife, Hannah Ashley,¹⁷³ was “cruel” to Black people enslaved on her property.¹⁷⁴ John Ashley led meetings with prominent men at his home in 1773 that led to the drafting of the Sheffield Resolves,¹⁷⁵ a document that criticized British colonial rule and championed freedom for all mankind.¹⁷⁶ Ms. Freeman heard these discussions, as well as those surrounding the promises of liberty for all within the Declaration of Independence in 1776 and the passage of the Massachusetts Constitution in 1780.¹⁷⁷ According to one account, Ms. Freeman noticed that these discussions emphasized “that all people were born free and equal, and she thought long about it, and resolved she would try whether she did not come in among them.”¹⁷⁸ After Hannah Ashley tried to strike Ms. Freeman’s sister with a hot shovel but hit Ms. Freeman instead, leaving a gruesome scar, Ms. Freeman decided to test the declarations of freedom for all within the Massachusetts Constitution.¹⁷⁹

Ms. Freeman persuaded Theodore Sedgwick, a white male lawyer who had co-authored the Sheffield Resolves, to represent her in her lawsuit.¹⁸⁰ In May 1781, Sedgwick filed a writ of replevin¹⁸¹ demanding

¹⁷³ Suzanne Geissler Bowles, *Tapping Reeve and Mumbet: Abolishing Slavery in Massachusetts*, PRINCETON & SLAVERY, <https://slavery.princeton.edu/stories/tapping-reeve> (last visited July 24, 2025).

¹⁷⁴ Alexander, *supra* note 169.

¹⁷⁵ The document was also known as the “Sheffield Declaration.” Taylor, *supra* note 169.

¹⁷⁶ *Jury Decides in Favor of Elizabeth “Mum Bett” Freeman*, MASS HUMANS. [hereinafter *Jury Decides in Favor*], <https://www.massmoments.org/moment-details/jury-decides-in-favor-of-elizabeth-mum-bett-freeman.html> (last visited July 13, 2025). Researchers disagree on what sparked Ms. Freeman’s motive to file a lawsuit against the man who claimed to own her. See Bowles, *supra* note 173; *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁷⁷ Bowles, *supra* note 173; Alexander, *supra* note 169.

¹⁷⁸ *Jury Decides in Favor*, *supra* note 176.

¹⁷⁹ Bowles, *supra* note 173.

¹⁸⁰ *Id.* Tapping Reeve served as Ms. Freeman’s co-counsel in the suit. *Id.*

¹⁸¹ Mumbet Court Records, *Elizabeth Freeman*, MUMBET.COM, <https://elizabethfreeman.mumbet.com/who-is-mumbet/mumbet-court-records> (last visited July 14, 2025); Writ of Replevin, MASS.GOV, <https://www.mass.gov/files/replevin-332x500.jpg> (last visited July 14, 2025). A writ of replevin is a “prejudgment process ordering the seizure or attachment of alleged illegally taken or wrongfully withheld property to be held in [law enforcement]’s custody or that of another designated official, under order and supervision of the court, until the court determines otherwise.” *Writ of Replevin*, U.S. MARSHALS SERV., <https://www.usmarshals.gov/what-we-do/service-of-process/civil-process/writ-of-replevin> (last visited Oct. 3, 2025).

that Ms. Freeman and an enslaved man named Brom, be freed from captivity because they were not John Ashley's property.¹⁸² Because John Ashley rejected the writ, the county court heard Ms. Freeman's and Brom's claims on August 21, 1781, where their attorney argued that they were free under the Massachusetts Constitution.¹⁸³ The next day, a jury ruled in Ms. Freeman's and Brom's favor. The court granted their freedom and required John Ashley to pay thirty shillings in damages and five pounds, fourteen shillings, and four pence in court costs.¹⁸⁴ John Ashley appealed, but a 1783 Massachusetts Supreme Judicial Court reasoned that the state constitution abolished slavery, and John Ashley abandoned his appeal.¹⁸⁵ Ms. Freeman's proactive resistance led to the abolition of slavery in Massachusetts.¹⁸⁶ Ms. Freeman's life as a proactive resistor of the past continues to inspire those who learn of her today; people view her "as a beacon of strength and determination."¹⁸⁷

Pamela Moses is a present-day proactive resistor. She is a Black mother of two children,¹⁸⁸ in her forties,¹⁸⁹ a founding member of the

¹⁸² *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171. As one report explained, "Elizabeth Freeman was a key component in the abolition of slavery across the United States, not only because she was the first slave to successfully sue for her freedom, but also because she became a beacon of hope for others to do so as well." *Brom and Bett v. Ashley*, DIGICATION, <https://oxford-emory.digication.com/elizabeth-freeman/brom-and-bett-v-ashley> (last visited July 13, 2025).

¹⁸³ Bowles, *supra* note 173; Alexander, *supra* note 169; *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁸⁴ Mumbet Court Records, *supra* note 181; Bowles, *supra* note 173.

¹⁸⁵ *Massachusetts Constitution and the Abolition of Slavery*, *supra* note 171.

¹⁸⁶ Barbara Stark, *Deconstructing the Framers' Right to Property: Liberty's Daughters and Economic Rights*, 28 HOFSTRA L. REV. 963, 1014 (2000). After gaining her freedom, John Ashley asked Ms. Freeman to work for him, but she declined; Ms. Freeman worked in Sedgwick's household instead. Bowles, *supra* note 173; Alexander, *supra* note 169. Ms. Freeman bought her own home using the money she saved and was regarded as a leader in the Black community. *Id.*

¹⁸⁷ *Who is Elizabeth Freeman?*, *supra* note 168. Ms. Freeman's gravestone states, "She could neither read nor write, yet in her own sphere she had no superior nor equal." Abigail Higgins, *How Elizabeth Freeman Sued for Her Freedom—and Won*, HIST. (Mar. 22, 2019), <https://www.history.com/news/elizabeth-freeman-slavery-case-dred-scott-freedom>.

¹⁸⁸ Levine, *supra* note 19.

¹⁸⁹ *Id.* Yolanda Jones, *Local Activist Sentenced to Six Years for Illegally Registering to Vote*, DAILY MEMPHIAN (Feb. 4, 2022, at 16:45 CT), <https://dailymemphian.com/article/26895/pamela-moses-voter-registration-sentence-six-years>. For further details, see Carla Laroche, Professor of Law, Black Women's Voter Emancipation in Slavery's Afterlife, Address at the University of

Black Lives Matter chapter in Memphis, Tennessee, and an active member of her community.¹⁹⁰ Believing in the power of the United States' political process to shape the policies that affect her family and community, Ms. Moses decided to run for mayor of Memphis, Tennessee.¹⁹¹ When she tried to get her name onto the Memphis 2019 mayoral ballot, however, the Shelby County Election Commission informed her that she was prohibited from running for office and voting.¹⁹² They reported that Ms. Moses was still on probation from a 2015 felony conviction and, as a result, could not vote.¹⁹³ Tennessee, like several other states, bars people convicted of certain crimes from public office and voting,¹⁹⁴ unless the state has expunged their conviction or restored their rights. Further, the Tennessee Legislature has enumerated certain criminal offenses that trigger a lifetime ban on voting for individuals convicted of those offenses.¹⁹⁵

The Commission's claims that Ms. Moses was ineligible to vote were a surprise to her. No one had informed Ms. Moses previously that her prior convictions excluded her from voting. As Ms. Moses explained, "They never mentioned anything about voting. They never mentioned anything about not voting, being able to vote . . . none of that."¹⁹⁶ Nevertheless, since Ms. Moses believed she had completed her

Richmond Law Review Symposium: Vestiges of the Confederacy: Reckoning with the Legacy of the South (Mar. 1, 2024), in 58 U. RICH. L. REV. 653 (2024) [<https://doi.org/10.2139/ssrn.4943546>].

¹⁹⁰ Laroche, *supra* note 189, at 654.

¹⁹¹ *Id.*

¹⁹² Levine, *supra* note 19.

¹⁹³ Toby Sells, *New Trial Ordered in Voting Fraud Case*, MEMPHIS FLYER (Feb. 25, 2022, at 16:39 CT), <https://www.memphisflyer.com/new-trial-ordered-in-voting-fraud-case>. In 2021, Ms. Moses filed a federal lawsuit to challenge the constitutionality of this 2015 conviction. Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 at 1–3, *Moses v. Tennessee*, No. 2:21-cv-02643 (W.D. Tenn. Oct 12, 2021). The trial court dismissed the case in 2022. Order Granting Motion to Dismiss, Denying Petition Pursuant to 28 U.S.C. § 2254, Denying a Certificate of Appealability, Certifying that an Appeal Would Not Be Taken in Good Faith, and Denying Leave to Proceed *in Forma Pauperis* on Appeal, *Moses v. State of Tennessee*, No. 2:21-cv-02643 (W.D. Tenn. Sept. 12, 2022), Dkt. No. 38.

¹⁹⁴ TENN. CODE ANN. §§ 8-18-101, 40-29-102 (2025). People seeking to restore their voting rights must have also paid their court costs and restitution and be current on their child support payments. *Id.* § 40-29-102(c). One of Ms. Moses's prior felonies imposed a lifetime ban on voting. Levine, *supra* note 19.

¹⁹⁵ TENN. CODE ANN. § 40-29-102(b).

¹⁹⁶ Sam Levine, *The Black Woman Sentenced to Six Years in Prison Over a Voting Error*, THE GUARDIAN (Feb. 3, 2022, at 10:00 ET), <https://www.theguardian.com/us-news/2022/feb/03/fight-to-vote-tennessee-pamela-moses-convicted>.

term of probation, she sought official confirmation that she was eligible to vote under Tennessee's restoration criteria.¹⁹⁷

Ms. Moses remained undeterred after getting a court ruling stating she was still on probation that she believed was incorrect¹⁹⁸ and sought clarification directly from the probation office within the Department of Corrections.¹⁹⁹ A probation officer confirmed what Ms. Moses believed to be true—she was eligible to vote because she was no longer on probation—and the officer signed a certificate acknowledging that information.²⁰⁰ A day later, and unbeknownst to Ms. Moses, the Department of Corrections sent a letter to the Election Commission explaining that Ms. Moses could not vote because she was “still under an active felony sentence.”²⁰¹

A Shelby County Election Commission representative, whose responsibilities included helping people with convictions navigate the voter registration process, took glee in sharing Ms. Moses's voting ineligibility with a colleague. The email, in full, stated, “LOOK AT HER STATUS!!! PERMANENTLY INELIGIBLE,” with a smiley face emoji.²⁰² The administrator of elections who supervised the representative mentioned Ms. Moses's “frequent and sometimes harassing visits to our offices” as part of an excuse for the staff's delight in learning that Ms. Moses was ineligible to vote.²⁰³

¹⁹⁷ WREG NEWS, *Memphis Woman Faces Sentencing in Voter Fraud Case*, at 00:56–01:29 (YouTube, Jan. 26, 2022), <https://www.youtube.com/watch?v=Jqaxe66UzOI> (testifying that she did not receive any notice that her felony convictions banned her from voting in Tennessee). Ms. Moses's sentencing hearing likely did not include a warning about the many consequences one faces after being convicted of a felony. See *State v. Moses*, No. W2015-01240-CCA-R3-CD, 2016 Tenn. Crim. App. LEXIS 665, at *5–11 (Tenn. Crim. App. Sept. 6, 2016).

¹⁹⁸ *Local Activist Appeals Judge's Ruling That She Is Still on Probation, Which Would Rule Out a Run for Memphis Mayor*, ABC (July 11, 2019, at 10:00 CT), <https://www.localmemphis.com/article/news/investigations/i-team/local-activist-appeals-judges-ruling-that-she-is-still-on-probation-which-would-rule-out-a-run-for-memphis-mayor/522-d3771e1d-3f0d-4800-a50e-44cce478e36b>.

¹⁹⁹ Levine, *supra* note 196.

²⁰⁰ WREG NEWS, *supra* note 197, at 00:29–00:31.

²⁰¹ Eduardo Medina, *Black Woman's Bid to Regain Voting Rights Ends With a 6-Year Prison Sentence*, N.Y. TIMES (Feb. 7, 2022), <https://www.nytimes.com/2022/02/07/us/pamela-moses-sentence-tennessee.html>.

²⁰² E-mail from Vicki Collins, Shelby Cnty. Election Comm'n, to Elizabeth Exley (Sept. 4, 2019, at 09:06 CT) (emphasis in original), <https://www.documentcloud.org/documents/23320476-vicki-collins-email-to-elizabeth-exley>.

²⁰³ Levine, *supra* note 19.

Even though the probation officer gave Ms. Moses the wrong information, Shelby County District Attorney General Amy Weirich's office charged Ms. Moses with perjury on a registration form and consenting to a false entry on official election documents.²⁰⁴ After the district attorney dropped the perjury charge, Ms. Moses was convicted of the "consenting to a false entry on official election documents" charge in November 2021.²⁰⁵ Ms. Moses was detained on December 10, 2021, and held in jail awaiting sentencing.²⁰⁶ She faced a sentencing range of four to eight years in prison because of her prior felonies.²⁰⁷

During the January 26, 2022, sentencing hearing, Ms. Moses explained to the presiding judge, Judge W. Mark Ward, that she did not intend to falsify any documents.²⁰⁸ Judge Ward, however, accused Ms. Moses of knowing what she was doing, claiming, "You tricked the probation department into giving you a document saying that you were off probation."²⁰⁹ Four days later, Judge Ward announced Ms. Moses's punishment: six years and a day in prison.²¹⁰ Ms. Moses followed the disenfranchisement maze as required and the state incarcerated her. After receiving information about the probation officer's actions that the state did not provide to Ms. Moses before the trial, the judge granted a new trial.²¹¹ On the eve of the new trial, the prosecution

²⁰⁴ *Id.*

²⁰⁵ *Id.*; Press Release, Shelby Cnty. Dist. Att'y, Woman Sentenced in Illegal Voting Sign-Up (Jan. 31, 2022), <https://www.scdag.com/news-releases/woman-sentenced-in-illegal-voting-sign-up>; Medina, *supra* note 201.

²⁰⁶ WREG NEWS, *supra* note 197, at 0:25-0:35.

²⁰⁷ *Id.* at 00:35-00:45.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 00:57-01:03. The judge's characterization of Ms. Moses follows the perpetual tropes of Black women as angry and manipulative. See Laroche, *supra* note 28, at 2444-45. These racist and sexist tropes of Black women developed during slavery and continue in slavery's afterlife. See *supra* Part I.A.

²¹⁰ Judge Ward noted that he would consider releasing Ms. Moses after nine months and placing her on probation if Ms. Moses completed certain programs and had good behavior during her incarceration. *Legal Experts Baffled by Sentence for Registering to Vote*, ASSOCIATED PRESS NEWS (Feb. 9, 2022, at 16:28 ET), <https://apnews.com/article/voting-rights-memphis-tennessee-voting-voter-registration-7c48535b436c0d77ba0b4afbe0069668>.

²¹¹ Laroche, *supra* note 189, at 655-56; see also E-mail from Joe S. Williams, Corr. Adm'r, to Lisa Helton (Sept. 5, 2019, at 12:40 CT), <https://s3.documentcloud.org/documents/21272992/pages/pamela-moses-email-redacted-p1-xlarge.gif?ts=1645633228816> ("Manager Billington failed to adequately investigate the status of this case."); Sam Levine, *New Evidence Undermines Case Against Black US Woman Jailed for Voting Error*, THE GUARDIAN (Feb. 24, 2022, at 10:00 ET),

dropped the charge. District Attorney General Weirich criticized Ms. Moses for not simply taking a plea, stating, “I gave her a chance to plead to a misdemeanor with no prison time She requested a jury trial instead.”²¹² Ms. Moses insisted on her innocence, resisted the image of herself as a fraudster, won her freedom, and continued to resist voter exclusion by filing a federal lawsuit.²¹³

Ms. Moses’s proactive resistance began with her determination to seek electoral office as mayor prior to her arrest and continued through her campaign to become a U.S. Senator of Tennessee after her release.²¹⁴ Her intentional actions represent her unapologetic desire to make policy changes and decisions to benefit her community. Rather than waiting for others to free her and those around her, Ms. Moses chose to lead the charge to access political power and voter emancipation. Her resistance is one that goes against the expectations of how Black women, especially those with criminal records, should behave in the United States. She asserted her civic autonomy and independence by seeking to run for election and to register to vote. Ms. Moses refused to accept the imposed power structure—that of oppression and domination; instead, she served as an example of civic freedom. Despite enduring caging within the criminal legal system after following the disenfranchisement maze, Ms. Moses continues her resistance through campaigning for political office. Ms. Moses’s resistance reminds those seeking to diminish her power that she will enforce her rights and, if denied those rights, she will call out the barriers and discrimination for the benefit of all.

<https://www.theguardian.com/us-news/2022/feb/24/fight-to-vote-newsletter-black-woman-jailed-voting-error-evidence>.

²¹² Levine, *supra* note 19.

²¹³ Complaint at 1, *Moses v. Tennessee*, No. 2:22-cv-02720 (W.D. Tenn. Oct 21, 2022) (claiming malicious prosecution). The trial court dismissed Ms. Moses’s claims. *Moses v. Weirich*, No. 2:22-cv-02720 (W.D. Tenn. Dec. 7, 2023), Dkt. No. 48. The Sixth Circuit denied Ms. Moses’s appeal and motion to reconsider its decision. Order Denying Appeal at 2–3 *Moses v. Tennessee*, No. 24-5195, 2024 U.S. App. LEXIS 28355 (6th Cir. Nov. 7, 2024), Dkt. No.15-1; Order Denying Motion to Reconsider at 1, *Moses v. Tennessee*, 24-5195, U.S. App. LEXIS 28355 (6th Cir. Feb. 27, 2025), Dkt. No. 23-1.

²¹⁴ Ms. Moses ran for U.S. Senate in November 2024 but lost. Pamela Moses, BALLOTEDIA, https://ballotpedia.org/Pamela_Moses (last visited Feb. 1, 2025); Megan Fayard, *Pamela Moses Announces Plans to Run for Senate*, WREG (Mar. 25, 2024, at 14:04 CT), <https://wreg.com/news/local/pamela-moses-announces-plans-to-run-for-senate>.

C. *Reactive Resistance*

Reactive resistance describes Black women whose acts of resistance respond to others' attempts to keep them enslaved or incarcerated. Their initial acts were not intended to spark resistance, but punishment and caging precipitated their acts of resistance.²¹⁵ Black women in the reactive resistance class engage in defensive efforts to protect or demonstrate their autonomy in the face of slavery and its afterlife. They, for example, may engage in community advocacy in response to laws that sought to trap them in domination; rather than being the founder of campaigns, their activism developed because of direct attacks on their rights. Though reactive resistance is harder to appreciate because the resistance is not initiated by the actor's own volition, these acts are no less important to the taxonomy of resistance. The Black women who engage in reactive resistance risk their freedom by speaking out in the face of the oppression others have imposed on them.

Reactive resistance was impactful during enslavement and remains so today. During slavery, enslavers sold enslaved people they believed were causing trouble or resisting the institution of slavery; as such, "enslaved individuals lived with the constant fear that at any moment they could be sold and sent to" worse places.²¹⁶ Today, Black women who fight their criminal charges by going to trial risk the "trial penalty," which is when a person who is found guilty after trial receives a harsher sentence than a person who pleaded guilty pretrial.²¹⁷ To

²¹⁵ Inclusion in the reactive class does not mean that Black women were not addressing issues in their communities before they performed their legal acts of resistance. Rather, Black women within this category are being recognized for working to resist in a way that often does not receive publicity. As attorney and author CeLillianne Green explained, "There are so many women whom we never heard of . . . It's the quiet power and dignity of Black women who you don't know about who paved the way." DeNeen L. Brown, *The Black Women Who Paved the Way for Kamala Harris*, WASH. POST (July 23, 2024), <https://www.washingtonpost.com/history/2024/07/23/kamala-harris-black-women-politics>.

²¹⁶ Matthew Costello, *The Enslaved Households of President John Tyler*, WHITE HOUSE HIST. ASS'N (Jan. 3, 2020), <https://www.whitehousehistory.org/the-enslaved-households-of-president-john-tyler>.

²¹⁷ *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, NAT'L ASS'N CRIM. DEF. LAWS. 5–6 (2018), <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>.

react incurs the risk of enduring harsh consequences, but many Black women do so nonetheless.

Henrietta Wood's efforts to obtain her freedom before the Civil War because of other people's actions serve as an illustrative example of the experiences of reactive class members.²¹⁸ In *Sweet Taste of Liberty: A True Story of Slavery and Restitution in America*, historian W. Caleb McDaniel provides a detailed accounting of Ms. Wood's life. Born enslaved, white enslavers sold Ms. Wood following her birth in 1818 or 1820.²¹⁹ In 1848, the wife of her enslaver filed for and registered Ms. Wood's freedom in Ohio state court.²²⁰ Ms. Wood called this period her "sweet taste of liberty"²²¹ because in 1853, a white man, Zebulon Ward, led the scheme to kidnap Ms. Wood, take her to Kentucky, and sell her back into slavery.²²²

²¹⁸ Wood v. Ward, 30 F. Cas. 476, 477, 479 (C.C.S.D. Ohio 1878) (No. 17,965) (describing Ms. Wood's legal claims and granting her relief); see Hal Clay, Note, *Forty Acres and a Mule: America's Bill for Reparations is Long Past Overdue*, 24 SCHOLAR: ST. MARY'S L. REV. RACE & SOC. JUST. 505, 530 (2023); William Y. Chin, *Epigenetics and Reparations: How Epigenetics Can Help Federal Plaintiffs Meet the Constitutional Article III Standing Requirements in Reparation Lawsuits*, 22 SEATTLE J. FOR SOC. JUST. 3, 4–5 (2023); Briana P. Adams-Seaton, Note, *Sugar is Queen: Analyzing Antiguan Descendants' Case for Reparations to Harvard University*, 64 HOW. L.J. 409, 415 (2021); W. CALEB MCDANIEL, *SWEET TASTE OF LIBERTY: A TRUE STORY OF SLAVERY AND RESTITUTION IN AMERICA* 3–4, 217 (2019).

²¹⁹ MCDANIEL, *supra* note 218, at 17 & 263 n.1. Historians are unable to determine Ms. Wood's actual year of birth. McDaniel notes, "Nineteenth-century records about [B]lack women in particular faced an uphill battle for survival in the archives. Glimpsing their stories now requires peering through and around a multitude of blinds." *Id.* at 245.

²²⁰ Ohio was a free state, and one state court judge had ruled that once an enslaved person stepped foot in Ohio, they were free automatically. *Id.* at 46. Even with this court ruling, white enslavers ignored the immediacy of Black people's freedom when traveling to Ohio. *Id.* Ms. Wood lived in the state for a year before her enslaver filed the official paperwork that confirmed Ms. Wood was free. *Id.* at 49. Even after becoming "free" on paper, Ms. Wood's former enslaver expected Ms. Wood to work for her and did not pay Ms. Wood for the work she completed. *Id.* at 50–51. After a year of working for her former enslaver, Ms. Wood negotiated employment with other white employers, on her own terms. *Id.* at 51–53.

²²¹ *Id.* at 13.

²²² *Id.* at 3; Jacqueline Hudson, *Henrietta Wood: The Enslaved Woman Who Sued for (and Won) Reparations*, NAT'L UNDERGROUND R.R. FREEDOM CTR.: FREEDOM CTR. VOICES (Oct. 7, 2022), <https://freedomcenter.org/voice/henrietta-wood>; W. Caleb McDaniel, *In 1870, Henrietta Wood Sued for Reparations—and Won*, SMITHSONIAN MAG. (Sept. 2019), <https://www.smithsonianmag.com/history/henrietta-wood-sued-reparations-won-180972845>; Jerkins, *supra* note 167. The daughter of Ms. Wood's former enslaver encouraged Ward to re-enslave Ms. Wood. MCDANIEL, *supra* note 218, at 13.

Soon after Ms. Wood's false imprisonment, a freedom suit was filed on Ms. Wood's behalf in Kentucky.²²³ The suit sought a declaration that Ms. Wood was being held unlawfully and a judgment that authorized Ms. Wood to regain her freedom.²²⁴ Though legally free, the court refused to allow her release pending trial; for over a year, Ms. Wood was incarcerated in a jail and forced to work for the jailer's benefit.²²⁵ Unfortunately for Ms. Wood, Ward convinced the court that Ms. Wood "belonged" to him and the judge denied her request to be freed.²²⁶ Because of this decision, Ms. Wood remained enslaved for fifteen years.²²⁷

In 1869, after she was freed a second time,²²⁸ Ms. Wood returned to Ohio. Two years later, she filed a lawsuit in state court against Ward for her fifteen years of false imprisonment.²²⁹ In her suit, Ms. Wood requested \$20,000 in restitution.²³⁰ Although Ward presented legal and factual defenses to defeat Ms. Wood's claims, the jury found in Ms. Wood's favor in 1878 and awarded her \$2,500.²³¹ The judgment against Ward is the largest known damages award for slavery.²³² Ward was embarrassed that an all-white jury sided with Ms. Wood.²³³ By declining to award the full \$20,000 that she sought, however, the jury refused to acknowledge and value all Ms. Wood had lost over her fifteen years of unlawful re-enslavement. Ms. Wood longed to be free from enslavement, yet, racism and sexism within the legal system limited her yet again. Receiving the \$2,500 judgement against Ward did not erase

²²³ MCDANIEL, *supra* note 218, at 75–78.

²²⁴ *Id.* at 78.

²²⁵ *Id.* at 87–88.

²²⁶ Ms. Wood's attorney filed an appeal, but, because a fire destroyed the records, we do not know what the parties argued. *Id.* at 96. The Kentucky Court of Appeals affirmed the trial court's decision that Ward "owned Ms. Wood. *Id.* at 97. State prosecutors indicted Ms. Wood's kidnappers in Ohio. *Id.* at 76–77. The proslavery judge who presided over the criminal case ruled that the U.S. Supreme Court had voided the criminal statute that made it illegal to kidnap a free Black person and a jury acquitted Ms. Wood's kidnappers after that ruling. *Id.* at 91–92.

²²⁷ *Wood v. Ward*, 30 F. Cas. 476, 477–78 (C.C.S.D. Ohio 1878) (No. 17,965).

²²⁸ MCDANIEL, *supra* note 218, at 166–68, 177.

²²⁹ *Wood*, 30 F. Cas. at 477–78; MCDANIEL, *supra* note 218, at 188–90, 198–99.

²³⁰ *Wood*, 30 F. Cas. at 477.

²³¹ *Id.* at 477, 479; MCDANIEL, *supra* note 218, at 7.

²³² Adams-Seaton, *supra* note 218, at 415.

²³³ MCDANIEL, *supra* note 218, at 3–4 (noting that the monetary award caused Ward "great embarrassment" and amazed the public who learned of it).

the repeated disappointments Ms. Wood faced while seeking emancipation.

Like Ms. Wood, Crystal Mason has experienced repeated disappointments using the legal system today.²³⁴ Ms. Mason is a Black mother who pleaded guilty to a felony in federal court,²³⁵ and, in 2011, the court “sentenced her to five years’ imprisonment and three years of supervision after her release and ordered her to pay full restitution.”²³⁶ Two years later, after Ms. Mason’s appeals process had run, the local elections supervisor’s office mailed notices to Ms. Mason’s home address letting her know of her ineligibility to vote. Ms. Mason, however, was in federal prison at that time and did not receive any of these notices.²³⁷

Upon her release in August 2016, Ms. Mason returned home and began serving her three-year term of supervised release.²³⁸ A probation supervisor testified that no one informed Ms. Mason of the voter exclusion laws and policies that applied upon her release.²³⁹ Kenneth Mays, a probation supervisor, admitted, “That’s just not something we do. In my opinion, that’s common knowledge, but that’s not something we do.”²⁴⁰

In November 2016, Ms. Mason went to her local polling place after promising her mother she would not miss the opportunity to vote.²⁴¹ Ms. Mason’s name was not on the voter rolls—because she was on supervised release and ineligible to vote—and Ms. Mason cast a

²³⁴ Cynthia Alkon, *The Lost Promise of Lambert v. California*, 49 STETSON L. REV. 267, 285–86 (2020); Benjamin Plener Cover, *Voter Fraud Mistake*, 33 WM. & MARY BILL RIGHTS J. 709, 712–13 (2025).

²³⁵ *United States v. Mason-Hobbs*, Nos. 13-CV-078-A, 11-CR-151-A-1, 2013 WL 1339195, at *5 (N.D. Tex. Apr. 3, 2013).

²³⁶ *Mason v. State*, 663 S.W.3d 621, 624 (Tex. Crim. App. 2022); see Transcript of Record at 17:8–14, *Mason v. State*, 598 S.W.3d 755 (Tex. App. 2020) (No. 02-18-00138-CR), <https://www.documentcloud.org/documents/6219544-Crystal-Mason-Trial-Transcript.html#document/p20/a514777>.

²³⁷ Taylor Barnes, *Texas Mother Crystal Mason Appeals Five-Year Sentence for Illegal Voting*, CNN (Sep. 11, 2019), <https://www.cnn.com/2019/09/10/us/texas-woman-ineligible-voting-appeal/index.html>.

²³⁸ Transcript of Record, *supra* note 236, at 20:6–8.

²³⁹ *Mason*, 663 S.W.3d at 625.

²⁴⁰ Transcript of Record, *supra* note 236, at 20:9–17.

²⁴¹ Laroche, *supra* note 189, at 664–65; see also Sam Levine, *Crystal Mason on a Ruling That Could Change Her Life: ‘I Know This Is Not Over,’* THE GUARDIAN (May 12, 2022), <https://www.theguardian.com/us-news/2022/may/12/crystal-mason-texas-court-ruling-fight-to-vote>.

provisional ballot.²⁴² Though her vote never counted, prosecutors charged Ms. Mason with voting while ineligible.²⁴³ Under section 64.012(a)(1) of the Texas Election Code, “[a] person commits an offense if the person . . . votes or attempts to vote in an election in which the person knows the person is not eligible to vote.”²⁴⁴ In 2018, Ms. Mason was tried and convicted of the offense, and the trial court sentenced her to five years in prison that same day.²⁴⁵ The Texas Second Court of Appeals affirmed Ms. Mason’s conviction in 2020.²⁴⁶ The Second Court of Appeals held that Ms. Mason did not need to know that she was ineligible to vote when she submitted her provisional ballot.²⁴⁷ That Ms. Mason was ineligible, knew she was on supervised release, and voted were sufficient to violate the statute. Ms. Mason then appealed her conviction to the Texas Court of Criminal Appeals, the state’s highest appellate criminal court.²⁴⁸

In 2021, Ms. Mason’s lawyers filed a supplemental brief arguing that the Texas Legislature passed new voting laws that made Ms. Mason’s conviction and sentence invalid.²⁴⁹ In May 2022, the Court of Criminal Appeals held that Ms. Mason’s provisional ballot was a “vote” for the purposes of Texas’ elections laws.²⁵⁰ Nonetheless, the Court of Criminal Appeals held, “[T]he court below erred by failing to require proof that [Ms. Mason] had actual knowledge that it was a crime for her to vote while on supervised release.”²⁵¹ The Court of Criminal Appeals remanded Ms. Mason’s case to the Second Court of Appeals and mandated that it review the evidence in Ms. Mason’s records based on a knowledge *mens rea*.²⁵² The Second Court of Appeals heard oral arguments on the matter in 2023 and issued its order acquitting Ms.

²⁴² Laroche, *supra* note 189, at 665.

²⁴³ Barnes, *supra* note 237.

²⁴⁴ TEX. ELEC. CODE ANN. § 64.012(a)(1) (West 2023).

²⁴⁵ Laroche, *supra* note 189, at 665.

²⁴⁶ *Mason v. State*, 598 S.W.3d 755, 762–63 (Tex. App. 2020), *aff’d in part and remanded in part*, 663 S.W.3d 621 (Tex. Crim. App. 2022).

²⁴⁷ *Id.* at 780–81.

²⁴⁸ See Appellant’s Brief on the Merits, *Mason v. Texas*, No. PD-0881-20, 2021 WL 2181846, at *11, *50 (Tex. Crim. App. May 18, 2021).

²⁴⁹ Appellant’s Supplemental Brief, *Mason v. Texas*, No. PD-0881-20, 2021 WL 5995157, at *1, *6–7 (Tex. Crim. App. Dec. 7, 2021).

²⁵⁰ *Mason v. State*, 663 S.W.3d 621, 634–35 (Tex. Crim. App. 2022).

²⁵¹ *Id.* at 624.

²⁵² *Id.*

Mason in March 2024.²⁵³ In acquitting Ms. Mason of the voter fraud charge, the court held that the prosecutor failed to present sufficient evidence to prove Ms. Mason's guilt.²⁵⁴ The prosecutor has since appealed that decision to the Texas Court of Criminal Appeals,²⁵⁵ and that court has decided to take that discretionary appeal.²⁵⁶ Ms. Mason's case remains pending, more than nine years after she cast a provisional ballot.

Ms. Mason's voting resistance began more subtly than Ms. Moses's did yet is still critical to opposing the shadow of slavery's afterlife. Ms. Mason's everyday practice started with a promise to her mother to cast her ballot in an election. The act of voting itself holds people seeking political office and those hoping to maintain political power accountable. Ms. Mason's presence in the polling place and casting the provisional ballot were straightforward demands to be included in the electorate. The government's prosecution of Ms. Mason's mistaken belief that she was eligible to vote aims to punish Ms. Mason's participation in the electoral process.

Ms. Mason's resistance revolves around her refusal to plead guilty to her attempt to exercise her political power through the ballot box, instead she has demanded that the prosecutor and judiciary hold true to the fairness and leniency they often show other people.²⁵⁷ Only 2 percent of criminal cases go to trial, instead individuals plead guilty through negotiations and deals.²⁵⁸ Ms. Mason's continued resistance is part of that 2 percent. Rather than plead guilty to an act she did not

²⁵³ *Mason v. State*, 687 S.W.3d 772, 774 (Tex. App. 2024), *petition for discretionary rev. granted* (Aug. 21, 2024).

²⁵⁴ *Id.* at 785.

²⁵⁵ State's Petition for Discretionary Review at 21, *Mason v. State*, No. PD-0300-24 (Tex. Crim. App. Apr. 25, 2024).

²⁵⁶ *State v. Mason*, No. PD-0300-24 (Tex. Crim. App. August 21, 2024); Order Granting Discretionary Review, No. PD-0300-24 (Tex. Crim. App. August 21, 2024).

²⁵⁷ For example, a former Republican Justice of the Peace in the same county as Ms. Mason was sentenced to five years' probation after pleading "guilty to using fake signatures to secure his place on an election ballot" in 2018. Emily Wolf, *Crystal Mason Gains Support from Prosecutors in Appeal of Illegal Voting Conviction*, FORT WORTH REP. (Feb. 20, 2023), <https://fortworthreport.org/2023/02/20/crystal-mason-gains-supports-from-prosecutors-in-appeal-of-illegal-voting-conviction>. And, in 2015, a woman received an alternative to incarceration outcome after she pled guilty to making her son impersonate her husband to vote on his behalf. *Id.*

²⁵⁸ THEA JOHNSON, AM. BAR ASSOC., 2023 PLEA BARGAIN TASK FORCE REPORT 36 n.2 (2023), https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/rports/plea-bargain-tf-report.pdf.

know was illegal, Ms. Mason has continued fighting against the caging of her body and for her rights since casting a provisional ballot in 2016. Her legal case has gained statewide and national attention. Ms. Mason continues to fight the state of Texas to avoid recapture.

While Ms. Mason and Ms. Wood are resisters, it did not begin intentionally, which makes their resistance different from Ms. Freedman's and Ms. Moses's membership in the proactive resistance class. Ms. Mason did not seek to involve herself in a legal battle for her freedom upon being released from prison and casting a provisional ballot in 2016. In fact, Ms. Mason admitted, "I would never do anything else to jeopardize to lose my kids again. I was happy enough to come home and see my baby graduate, my daughter. Now my son is graduating again. I wouldn't have dared went to the poll[s] to vote."²⁵⁹ Similarly, Ms. Wood had experienced years of freedom from enslavement before someone else snatched that freedom away from her. Yet through their attempts to reverse their return to captivity, Ms. Wood and Ms. Mason pushed for justice and against the use of the law to inhibit their freedom.

D. *Resistance's Risks & Harms*

The women discussed in this Section risked and continue to risk cognizable and unknown harms in performing their acts of resistance. From reincarceration to enduring the stress of fighting entrenched foes, their resistance and persistence come at immeasurable costs to themselves and their loved ones. During enslavement, Ms. Freeman and Ms. Wood risked continued enslavement while looking to the court for their freedom. Ms. Freedman succeeded in gaining her freedom, but Ms. Wood did not. In the afterlife of slavery, Ms. Mason and Ms. Moses were separated from their families and incarcerated yet again because of their desire to exercise political power.²⁶⁰ In Ms. Mason's case, she cast her provisional ballot in November 2016, and yet she continues to wait for the conclusion of her case in 2025. We

²⁵⁹ Appellant's Brief on the Merits at 12, *Mason v. State*, 687 S.W.3d 772 (Tex. Crim. App. 2021) (No. PD-0881-20). For further details, see Laroche, *supra* note 189, at 664–669.

²⁶⁰ When law enforcement officers, prosecutors, the judiciary, and the executive branch target Black women with criminal convictions, they separate them from their families. See generally Barbara Rodriguez, *States Are Stepping Up Prosecutions for Voter Fraud. But Who Gets the Harshes Punishment?*, 19TH NEWS (Oct. 6, 2022, at 06:00 ET), <https://19thnews.org/2022/10/state-election-voter-fraud-prosecutions-harsh-sentences>. Families must endure the impact of this separation as well. Laroche, *supra* note 50, 527.

cannot ignore the stress and associated health problems her fight against the state of Texas may bring about as her case travels up and down the appellate process.²⁶¹ In Ms. Moses's case, upon the court granting her a new trial, she broke down and cried in the courtroom.²⁶² Ms. Moses affirmed that she rejected a plea deal offer from the prosecutors, continued to defend her case, and was willing to go back to jail on principle. Her emotional response to the court vacating her six-year criminal sentence and ending her separation from her family reflects what she, and other Black women, endure when resisting slavery's afterlife.²⁶³ Although Ms. Moses did not regret her acts of legal defiance, her experience reminds us that the attacks on her persistent efforts aim to wear her down.²⁶⁴

III. TOWARD VOTER EMANCIPATION

Evaluating Black women's historical and present-day resistance highlights that the taint of the afterlife of slavery requires the elimination of voter exclusion based on criminal convictions and the need and demand for acknowledgement, equality, and justice. Black women insist on being treated with dignity and humanity, even in the face of critique and the risk of caging.²⁶⁵ Black women's persistence in these legal and political spaces of exclusion highlight their dedication to emancipation.

²⁶¹ Alice Abrokwa, *Stolen Futures and the Afrofuturist Case for Universal Healthcare* 17–18 (unpublished manuscript) (on file with author) (analyzing the impact of stress from litigation).

²⁶² Levine, *supra* note 19.

²⁶³ *Id.* Levine, *supra* note 196 (quoting Ms. Moses, who called her criminal case “traumatic”).

²⁶⁴ As bell hooks perceived in *Ain't I a Woman: Black Women and Feminism*,

Usually when people talk about the “strength” of [B]lack women they are referring to the way in which they perceive [B]lack women coping with oppression. They ignore the reality that to be strong in the face of oppression is not the same as overcoming oppression, that endurance is not to be confused with transformation.

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

²⁶⁵ As Anika Collier Navaroli, a whistleblower at the social media company X, professed about Black women's efforts, “Our contributions, our brains, our bodies, deteriorate under the weight of the work of doing this thing and creating safety that we don't ever get the credit, acknowledgement, profit from.” Ese Olumhense, *Whistleblowing While Black: How Truth-Telling Changes the Careers of Black Women in Tech*, 19TH NEWS (Mar. 13, 2024, at 08:00 ET), <https://19thnews.org/2024/03/black-women-tech-whistleblowers>.

In the hours after President Biden announced he would not be running for reelection in 2024 and endorsed Vice President Harris as the next Democratic presidential nominee, over 44,000 Black women joined a Zoom session hosted by Win with Black Women to strategize ways to combat the racism and sexism they anticipated Vice President Harris, a Black and Asian woman, would experience on the campaign trail.²⁶⁶ According to Jotaka Eaddy, the founder of Win with Black Women,²⁶⁷ the organization's initial meetings in 2020 were borne out of the desire to counter the racism and misogyny Black women endured as they were considered as potential vice presidential candidates.²⁶⁸

Ms. Eaddy explained that she views the group's efforts and persistence as "a collective love letter, from Black women to ourselves. And it belongs to all of us."²⁶⁹ For Ms. Eaddy and other Black women who face and witness racist and gendered targeting, their acts of resistance and those of the Black women described in this Article can be seen as methods of protection and ways to support each other. Through proactive and reactive resistance and working against the negative tropes, Black women not only highlight the punishment imposed on them, but also push back against the idea that they should be punished in the first place.²⁷⁰ They work against the "bigger agenda" to subvert "participation in democracy and women holding office," as researcher Melanie Smith put it.²⁷¹

²⁶⁶ Errin Haines & Jennifer Gerson, *Four Hours, 44,000 Black Women and One Zoom Call*, 19TH NEWS (July 23, 2024, at 11:56 ET), <https://19thnews.org/2024/07/win-with-black-women-zoom-call-harris-organizers>.

²⁶⁷ ABOUT #WINWITHBLACKWOMEN, WINWITHBLACKWOMEN.ORG, <https://www.winwithblackwomen.org> (last visited August 1, 2025) (listing one of collective's goal as "[e]liminating the racist and sexist attacks on Black women").

²⁶⁸ *Id.*; see also Haines & Gerson, *supra* note 266.

²⁶⁹ Haines & Gerson, *supra* note 266; see also Janice Gassam Asare, *How Current Events Are Impacting Black Women*, FORBES (Jul 30, 2024, at 16:53 ET), <https://www.forbes.com/sites/janicegassam/2024/07/29/how-current-events-are-impacting-black-women> ("Black women are always expected to be everyone's saviors but who is coming to save Black women? . . . When the world proves too harsh to bear, Black women must always remember that in community with other Black women is where revival, restoration, and respite will come from.").

²⁷⁰ See Alice Ristroph, *Respect and Resistance in Punishment Theory*, 97 CAL. L. REV. 601, 628 (2009) (using Thomas Hobbes' writings to analyze right to resist punishment).

²⁷¹ Rodriguez, *supra* note 2; see also Tensley, *supra* note 12. For instance, Brittany Martin, a mother of five children, was sentenced to four years in prison because she yelled at police officers during a nonviolent protest she led in South Carolina after a police officer murdered George Floyd, an unarmed Black man, in 2020. Christina

To end the need to engage in this personal fight against injustice requires giving Ms. Moses, Ms. Mason, and other Black women the freedom to live without the fear of criminalization and being used as a tool for suppression. The United States must destroy the racial and gender tropes that remain from the slavery period, recognize past racism and sexism against Black women, and reckon with accepting and enforcing Black women's freedom.²⁷²

A. *Legal Reform*

Along with changing the way society treats and degrades Black women, the United States must achieve voter emancipation. Because voter exclusion based on criminal convictions depends on individuals having criminal records, Black women would not face recriminalization in this context if state and federal governments did not arrest and prosecute Black women in the first place. Rather than using the criminal legal system to control and regulate Black women, authorities must address mass incarceration and offer supports that keep Black women out of the system overall. Without a criminal conviction, they would not have to fear registering to vote and voting while ineligible.

Carrega, *South Carolina Punished a Black Woman for Protesting. Her Supporters Demand Her Release.*, CAP. B NEWS (Mar. 11, 2024), <https://capitalbnews.org/incarcerated-for-protesting>. Ms. Martin did not have a criminal record. Because she resisted the expectations that she be “polite” in calling out injustice, she was charged with “breaching the peace in a high and aggravated manner,” and she faced the wrath of the criminal legal system. *Id.* While serving her four-year sentence, the South Carolina Court of Appeals rejected her argument that her conviction should be reversed and that her sentence was excessive. Christina Carrega, *South Carolina Court Upheld Brittany Martin’s 4-Year Sentence for Protesting*, CAP. B NEWS (Aug. 14, 2024), <https://capitalbnews.org/brittany-martin-protester-appeal-denied>. Reportedly, Ms. Martin, “may be the only known leader of protests during the civil unrest of 2020—and perhaps in the state’s history—who was sent to prison without laying a finger on a police officer or damaging property.” Carrega, *supra* note 271. Supporters of Ms. Martin noted that charging and incarcerating her served as a threat to other Black people not to protest or risk the same punishment. *Id.*

²⁷² This racial and gender justice process should include public apologies, reparations, and asking Black women what other forms of repair and healing should entail. Recognition of their efforts is only a start; more is required for the costs they have been forced to pay. For a discussion on reparative proposals to address enslavement, for example, see Robert Westley, *Restitution Claims for Wrongful Enslavement and the Doctrine of the Master’s Good Faith*, 3 BRIT. J. AM. LEGAL STUD. 287 (2014). Ms. Moses and Ms. Mason are part of a movement to gain emancipation, though history often ignores or devalues their contributions.

One of the best ways to accomplish voter emancipation would be to support interventions proposed by, led by, and focused on Black women who are directly impacted by voter exclusion based on criminal convictions.²⁷³ The separation of people from their families and the need to fight against the state to protect their freedom warrants abolishing voter exclusion based on criminal conviction altogether. Doing so is the only way that people with criminal convictions may get closer to voter emancipation. To support this disenfranchisement authorizes continued oppression that the United States claimed to abolish after the Civil War. Those who were against emancipation of Black people after the Civil War found ways to sustain slavery through constitutional carve outs, and the same would occur for voter exclusion should any exception exist.²⁷⁴

This Article has demonstrated that people—particularly Black women—with criminal convictions face harsh punishment because of their criminal records. Even when others have committed intentional voter fraud, they do not receive the yearslong sentences that Black women have received. Individuals may consider filing selective prosecution claims in these instances.²⁷⁵ Though a difficult test to prove, with the evidence described in this Article, Black women accused of voter fraud for registering and/or voting while ineligible

²⁷³ In a prior article, I recommended that the United States should eliminate voter exclusion based on criminal convictions altogether. Laroche, *supra* note 28, at 2487–95 (2022). I emphasized that the United States needs state and federal initiatives that weaken and ban voter exclusion schemes. *Id.* at 2492–93. Other recommendations included “divesting from whiteness [by] rejecting the continuous benefits white society receives from denying Black women the right to vote,” applying intersectional analysis in court decisions, and developing mutual aid projects led by and focused on Black women with convictions that also educates people about the systemic issues responsible for racist and sexist injustices. *Id.* at 2489.

²⁷⁴ *Id.* at 2492–95.

²⁷⁵ In *United States v. Armstrong*, 517 U.S. 456 (1996), while emphasizing that prosecutors have broad discretion to decide to prosecute individuals, *id.* at 464, the U.S. Supreme Court explained the standard an accused must reach to satisfy a selective prosecution claim. *Id.* 465. Under the Due Process Clause of the Fifth Amendment, states may not charge people based on their protective class status. *Id.* The accused “must present ‘clear evidence’” demonstrating that the prosecutors violated the presumption that they followed equal protection requirements, *id.* (quoting *United States v. Chem. Found.*, 272 U.S. 1, 14–15, (1926)), by showing that the prosecutors’ decision “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Id.* (quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985)). The individuals must prove that the state did not prosecute similarly situated people who committed the same crimes. *Id.*

because of a criminal conviction may have evidence available to prove this claim.

Voter exclusion based on criminal convictions exists in the afterlife of slavery because state and federal constitutions, laws, and policies authorize it. Further, courts have yet to hold that this voter exclusion violates the constitution. To end the need for resistance requires courts to find voter exclusion based on criminal convictions, in all forms, unconstitutional. Recent state reforms to voter exclusion laws continue to ban certain groups from voting, including people who are incarcerated, people with particular criminal offenses, and people who have not completed a mandatory waiting period after their conviction or release.²⁷⁶ Courts should recognize how these consequences violate cruel and unusual punishment under the Eighth Amendment²⁷⁷ or a badge of slavery outlawed by the Thirteenth²⁷⁸ and Fifteenth Amendments.²⁷⁹

A constitutional amendment guaranteeing the right to vote for all must exist. Richard L. Hasen has emphasized the need for a federal constitutional amendment to protect the right to vote; he remarked that an amendment would require courts to reject restrictive voting efforts and empower voters to sue elections officials who infringe on their right to vote.²⁸⁰ A true right to vote would require states to do more work to justify the limitations they put on voting and voting access. The path to a right to vote amendment entails advocating for change in the name of overcoming oppression and undoing the

²⁷⁶ See *Restoration of Voting Rights for Felons*, Nat'l Council of State Leg. (Aug. 19, 2025), <https://www.ncsl.org/elections-and-campaigns/felon-voting-rights> (describing state law changes on voter exclusion based on criminal convictions).

²⁷⁷ U.S. CONST. amend. VIII. Mississippi plaintiffs challenged the state's lifetime voting ban for certain felony convictions based on Eighth Amendment grounds, but the U.S. Court of Appeals for the Fifth Circuit, *en banc*, ruled in the state's favor. *Hopkins v. Watson*, 108 F.4th 371, 375 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 1138 (Jan. 27, 2025) (No. 24-560).

²⁷⁸ *The Civil Rights Cases*, 109 U.S. 3, 8–9 (1883).

²⁷⁹ Scholars have emphasized the judiciary's ability to uphold a constitutional right to vote and the importance of it doing so. See Bertrall L. Ross II, *Fundamental: How the Vote Became a Constitutional Right*, 109 IOWA L. REV. 1703, 1767 (2024) ("If the Supreme Court takes its own constitutional interpretive methodology seriously, it should find the constitutional right to vote to be deeply rooted in the Constitution's text, as well as the nation's enduring history and tradition, and confirm its role in securing democratic republics throughout the United States.").

²⁸⁰ RICHARD L. HASEN, A REAL RIGHT TO VOTE: HOW A CONSTITUTIONAL AMENDMENT CAN SAFEGUARD AMERICAN DEMOCRACY 101, 128 (2024).

current attempts to diminish electoral power.²⁸¹ Recognizing that a constitutional amendment is not possible today and complete abolition will take time, I offer proposals that are achievable in the short term as well.²⁸²

Many state and local election offices have established laws, rules, and procedures that people must follow to restore their voting rights. State-by-state variations on eligibility, as well as misinterpretation, bias, and disinformation cause further fear of being ensnared in the criminal legal system for seeking to vote, as Ms. Moses's and Ms. Mason's experiences demonstrate. States should not allow these procedures to enable biases and racism to restrict access to voter registration and voting. Because the disenfranchisement maze benefits from misinformation and confusion, the burden should be on the state to ensure clarity.

States should provide automatic voter registration for people who become eligible to vote after a criminal conviction. Michigan, which has had automatic voter registration since 2019, became the first state to require automatic registration of people released from the Department of Corrections.²⁸³ Subsection 493b(6) of the Michigan law, enacted in 2023 and effective as of June 30, 2025, requires the automatic registration of all individuals who are scheduled to be released from incarceration and parole.²⁸⁴ The Secretary of State and Department of Corrections coordinated implementation of this mandate and must offer people the option of declining the automatic

²⁸¹ Cynthia Richie Terrell, *What's at Stake in Louisiana v. Callais—and Why it Matters for Women*, MS. MAGAZINE (Oct. 17, 2025), <https://msmagazine.com/2025/10/17/louisiana-v-callais-women-voting-rights-act> (explaining how women of color running for political office would have a harder time getting elected if the U.S. Supreme Court rules in *Louisiana v. Callais* that the Voting Rights Act did not bar racial vote dilution, which is when states implement district maps that weaken the votes of people of color); *Louisiana v. Callais* FAQ, LEGAL DEFENSE FUND, <https://www.naacpldf.org/case-issue/louisiana-v-callais-faq> (last visited Oct. 19, 2025) (stating that “*Louisiana v. Callais* impacts not only Black voters in Louisiana but every voter in this country, who risks losing their say in how America’s future unfolds if voter protections are further weakened.”).

²⁸² Akbar, *supra* note 24, at 2507, 2510; Laroche, *supra* note 50, at 548.

²⁸³ Ben Orner, *Michigan is First State to Automatically Register Ex-Prisoners to Vote*, MLIVE (Dec 1, 2023, at 8:00 ET), <https://www.mlive.com/politics/2023/12/michigan-is-first-state-to-automatically-register-ex-prisoners-to-vote.html> (stating that Michigan expanded automatic voter registration to people who would have their votes restored upon release from incarceration or parole); *see also* MICH. COMP. LAWS § 168.493b(6) (2023).

²⁸⁴ MICH. COMP. LAWS § 168.493b(6) (2023).

registration, but they cannot presume declination.²⁸⁵ All states should replicate and extend Michigan's easy-to-implement automatic registration law so that all people who are eligible to vote, including Black women, do not have to fear violating the disenfranchisement maze unwittingly.²⁸⁶

To alleviate the fear of incarceration based on lack of information or receipt of incorrect information, states should have to satisfy the fundamental right to due process in all elements of voter exclusion based on criminal convictions and the disenfranchisement maze. States must provide actual notice to every person they deem ineligible to vote because of criminal records. Proper notice includes an explanation of whether the state has taken a person's voting right away and a description of the specific process a person must complete to regain their voting rights, if eligible to do so.²⁸⁷ This notice should occur prior to and at sentencing, as well as prior to release and any post-conviction regulation requirements.

When loss of liberty and the vote are at stake, states must prioritize, not diminish, proper and accessible notice. Although it arises in a different context, the 1950 case, *Mullane v. Central Hanover Bank & Trust Co.*, is instructive.²⁸⁸ In *Mullane*, the U.S. Supreme Court held that the due process right of notice requires procedures that are "reasonably calculated under the circumstances" to let interested parties know that a lawsuit exists and to allow interested parties to file any objections.²⁸⁹ Further, in *Mennonite Board of Missions v. Adams*, the

²⁸⁵ *Id.*

²⁸⁶ According to the National Conference of State Legislatures, approximately twenty-five states and Washington, D.C. have implemented an automatic voter registration system. *Automatic Voter Registration*, NAT'L CONF. OF STATE LEG. (updated July 21, 2025), <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration>. This proposal would extend that system to jail and prison facilities across all jurisdictions.

²⁸⁷ See generally Naila S. Awan and Shruti Banerjee, *How to End De Facto Disenfranchisement in the Criminal Justice System*, DÉMOS (2020), https://www.demos.org/sites/default/files/2020-05/How%20to%20End%20De%20Facto%20Disenfranchisement%20in%20the%20Criminal%20Justice%20System_0.pdf (advocating for ways to protect the right to vote for people who were incarcerated previously).

²⁸⁸ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

²⁸⁹ *Id.* at 314; see also Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. REV. 1521, 1522–26 (2021) (analyzing the importance of proper notice under *Mullane* and the foundational reasons for this due process right); Jamison Wynn, *Procedural Whipsaw: Allocating the Burden of Proving Reasonable Notice to Prisoners of Forfeiture*

U.S. Supreme Court emphasized, “Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable.”²⁹⁰

For both Ms. Moses and Ms. Mason, the lack of notice about voter exclusion based on criminal convictions and the disenfranchisement maze raises due process concerns. In Ms. Moses’s case, a probation officer failed to review the correct database before certifying inaccurately that Ms. Moses was eligible to vote. The government’s own procedures and notices gave the prosecutor the opportunity to go after Ms. Moses. And the prosecutor in Ms. Mason’s case, Phil Sorrells, claimed that he appealed Ms. Mason’s acquittal because “I want would-be illegal voters to know that we’re watching And that we’ll follow the law and we will prosecute illegal voting.”²⁹¹ In claiming this goal, Sorrells ignored the evidence that Ms. Mason did not know she was ineligible to vote and seemed disinclined to prove that Ms. Mason received affirmative notice.²⁹²

A person who does not know they cannot vote after a criminal conviction must be put on notice of that ineligibility. The government bears the burden of giving people notice, and courts should require proof of actual notice to ensure prosecutors will not charge people who find themselves in circumstances like Ms. Moses and Ms. Mason. To hold both state and federal governments accountable, prosecutors must prove that the government met its due process burden before charging fraud against a person with a criminal conviction.

Providing this information is insufficient if it is not understandable. States must prove that their agencies provide people with accessible, easy-to-follow information about the ban on their right to vote. Scholars in other areas of law have recognized the importance

Proceedings and the (Renewed) Call for Actual Notice, 99 N.C. L. REV. 247, 253–55 (2020) (same).

²⁹⁰ *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983) (emphasis omitted).

²⁹¹ Keenan Willard, *Tarrant DA Defends Decision to Pursue Re-Conviction of Crystal Mason, Acquitted of Illegal Voting After 8 Years*, NBCDFW (May 7, 2024, at 22:30 ET), <https://www.nbcdw.com/news/local/tarrant-da-defends-decision-to-pursue-re-conviction-of-crystal-mason-acquitted-of-illegal-voting-after-8-years/3535638>.

²⁹² Express-News Editorial Bd., *supra* note 20.

of making descriptions of complicated laws and policies accessible.²⁹³ For example, in a critique of financial literacy programs that aim to educate people on financial markets and personal wealth development, Lauren Willis explained,

Covertly, the [financial-literacy education] model dupes consumers into thinking they can master the financial-services market, while placing blame upon them for their failure to do so, deflecting political pressure for change. But changing the personal-finance market or the manner in which consumers must maneuver in it—making the map easier to read and follow, giving them a guide, or building more direct routes to the American Dream—is likely to be more efficacious, and at a lower cost. Consumers can make welfare-enhancing choices, but to be truly autonomous, those choices must be made in a context that consumers can navigate.²⁹⁴

In Willis's analysis, merely offering information to people creates a false image of an educated consumer while ignoring the true reasons why the consumer did not understand their obligations in the first place.²⁹⁵ The same reasoning applies to the idea of proper notice to people ineligible to vote because of a criminal conviction. A document filled with legalese and contradictory information will neither be sufficient in practice nor satisfy a person's due process right to notice.²⁹⁶ As Ms. Moses's case illustrates, if a probation officer in

²⁹³ See PRINCIPLES OF THE L. DATA PRIV. § 3 cmt. a (AM. L. INST. 2020) (explaining that "commentary, scholarship, and empirical evidence suggests that traditional notice does not work").

²⁹⁴ Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 285 (2008); see also, Annamaria Lusardi & Olivia S. Mitchell, *The Importance of Financial Literacy: Opening A New Field*, 37 J. OF ECON. PERSP. 137, 149 (2023) [<https://doi.org/10.1257/jep.37.4.137>] (finding that a productive financial literacy program should make people "aware of their rights and obligations"); Paddy Hirsch, *Planet Money, The Case For Financial Literacy Education*, NPR (May 16, 2023, at 06:30 ET), <https://www.npr.org/sections/money/2023/05/16/1176189034/the-case-for-financial-literacy-education> (noting that personal finance information must retain the readers' attention).

²⁹⁵ For another example, in the civil forfeiture context, see Wynn, *supra* note 289, at 268–78 (advocating actual notice be required when states use civil forfeiture to retain the property of a person who is incarcerated).

²⁹⁶ Campaign Legal Center's RestoreYourVote.org webpage offers a great starting point to understand how to provide accessible information. *Restore Your Vote: I Have a Felony Conviction. Can I Vote?*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/restoreyourvote> (last visited Oct. 1, 2025). The site offers an online tool that allows people to answer straightforward questions to determine whether they are eligible. *Id.* ("The website serves to provide the best information available to make rights restoration accessible for citizens with felony convictions.").

Tennessee failed to accurately determine whether a person was eligible to vote, despite it being part of his employment responsibilities and his access to state resources, how transparent are these processes for individuals whose liberty is at stake?

States should move violations of the disenfranchisement maze outside of the criminal system to local administrative proceedings. That criminal prosecutors even charged Ms. Moses and Ms. Mason at all deserves reconsideration. Because of the tropes of Black women, the weaponization of the criminal legal system is a powerful tool against Black women's resistance and political power. If policymakers insist on banning people from voting and implementing the disenfranchisement maze, then they should remove enforcement of these voter exclusion laws from the criminal legal system. Scholars have recommended that the government should reform the laws criminalizing voting while ineligible because of conviction by heightening the *mens rea*, or culpable mental state, in voter fraud statutes.²⁹⁷ They, however, are misguided because, as Ms. Moses's case demonstrated, heightening the *mens rea* in criminal cases is insufficient and would not stop voter exclusion practices. The presiding judge in Ms. Moses's case imposed guilt and intentionality on her—claiming during the sentencing hearing that Ms. Moses tricked the probation officer without any evidence to substantiate that accusation—and the judge in Ms. Mason's case found her guilty after a short bench trial.²⁹⁸

States already have noncriminal procedures in place to address alleged electoral violations. When someone wants to register to vote, for example, they apply to the applicable election office. That office reviews databases to confirm that person's voter eligibility and provides notice and a hearing should they allege the person is ineligible.²⁹⁹ Or, take the case of Georgia, where an administrative judge imposed a civil punishment on a leader of the Republican party in Georgia who voted

States should review this accessible platform when implementing their own personalized notifications to individuals.

²⁹⁷ See, e.g., Cover, *supra* note 234, at 82–101 (examining how prosecutors, legislators, and judges may implement a higher *mens rea* to protect people who make unintentional voter mistakes).

²⁹⁸ WREG NEWS, *supra* note 197, at 0:57–1:03. My critique does not mean that heightening *mens rea* in criminal cases and ensuring that prosecutors meet that high burden of proof before charging an individual is not important.

²⁹⁹ For example, see ALA. CODE § 17-3-55 (2022).

nine times while ineligible, Richard Pritchard.³⁰⁰ Rather than seek criminal sanctions, the state attorney general referred the matter to an administrative judge for adjudication.³⁰¹ Pritchard had to face a public reprimand from the State Election Board and pay a \$5,000 fine.³⁰² Georgia chose the administrative route for Pritchard, a white man, and they should do the same for Black women as well.

Unlike the punishment in the Georgia matter, however, states should not impose financial penalties against individuals who violate the disenfranchisement maze process. If found liable for attempting to vote while ineligible, the administrative penalties should be nonmonetary only. The financial burden of a legal financial obligation would harm Black women; as research has shown, Black women with convictions are least likely to obtain employment and, if employed, are less likely to be hired for a full-time position than white women and men.³⁰³ As such, using the administrative process and imposing a financial punishment would continue the voter exclusion in slavery's afterlife, but in another form.³⁰⁴

Should policymakers be unwilling to address these disenfranchisement maze violations in administrative proceedings, reducing the criminal offense from a felony to a misdemeanor might seem like an appealing compromise but would not be a positive reform overall. In 2021, the Texas Legislature changed the level of offense from a felony to a misdemeanor.³⁰⁵ In doing so, the legislature thought that it would reduce the punishment people would face should they be

³⁰⁰ Mark Niese, *Judge Rules Georgia Republican Party's Vice Chairman Voted Illegally*, ATLANTA J.-CONST. (Mar. 28, 2024), <https://www.ajc.com/politics/georgia-judge-rules-that-republican-brian-k-pritchard-voted-illegally/M4A27QQNQJDW7MTI66MRF5B4EQ>. Richard Pritchard voted in Georgia while serving probation on a conviction in Pennsylvania between 2008 and 2010. Sam Levine, *Georgia Republican Official Fined \$5,000 for Voting Illegally Nine Times*, THE GUARDIAN (Mar. 28, 2024), <https://www.theguardian.com/us-news/2024/mar/28/georgia-republican-official-voting-illegally-fined>. He claimed that he was not aware he was still on probation when he voted. *Id.* The administrative judge did not find his claims credible. *Id.*

³⁰¹ Levine, *supra* note 300.

³⁰² Niese, *supra* note 300.

³⁰³ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL'Y INITIATIVE (Mar. 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.

³⁰⁴ *Id.* For a discussion of the lack of financial security and safety that exist because of people's criminal convictions and incarceration histories, see Laroche, *supra* note 28, at 2469–71; Laroche, *supra* note 50, at 544–46.

³⁰⁵ TEX. ELEC. CODE ANN. § 64.012(b) (2021).

convicted of voter fraud for voting while ineligible. While this modification is important, it does not go far enough in addressing the dangers a criminal proceeding brings about. Scholars have raised concerns about the large harm misdemeanor convictions have on individuals.³⁰⁶ Further, this recommendation does not address the injustice of being convicted of an action that is not, in fact, a crime. Unfortunately, Texas reversed course in 2023 and made the offense a felony once again.³⁰⁷

Overall, these changes in the laws and procedures would address the use of the criminal legal system to punish Black women for asserting their political and voting power. Implementing these legal recommendations would put the burden on state actors to ensure that Black women would not be forced to engage in proactive and reactive resistance to address the racial and gendered targeting of their political power in these contexts.

B. *Community Resistance*

While this Article has centered the experiences of a few Black women who defended their political and voting power, the support and efforts of other Black women and allies have magnified the force of their resistance. To address oppression within the afterlife of slavery requires a community effort. Community resistance to voter exclusion based on criminal convictions—like the resistance of Pamela Moses and Crystal Mason—may be proactive, reactive, or both; may involve people directly impacted by the criminal legal system or not; and may work to support one person targeted by the criminal legal system or broader legal reform. These individuals—many of whom may remain unknown—have also sought to dismantle the disenfranchisement maze or, at the very least, reduce its impact.

For example, advocacy groups have sought to inform people who have convictions, including those who are incarcerated in prisons and jails, about the disenfranchisement maze and whether they are eligible to vote.³⁰⁸ During the pendency of their cases, Ms. Moses and Ms.

³⁰⁶ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 715–16 (2017) [<https://doi.org/10.2139/ssrn.2809840>].

³⁰⁷ TEX. ELEC. CODE ANN. § 64.012(b) (2023).

³⁰⁸ *Operation Restoration Helping Women Impacted by Incarceration*, NOLA NOW (Dec. 10, 2024, at 11:55 ET), <https://www.nolanow.com/video/2024/12/10/operation-restoration-helping-women-impacted-by-incarceration>; Rhonda Sonnenberg, *It Takes a Village: New Orleans Group Partners With Others to Get Out the Vote*, S. POVERTY L. CTR. (Dec. 29, 2023), <https://www.splcenter.org/news/2023/12/29/new-orleans-group->

Mason elevated these issues through discussions with the press and policymakers. Voters in Tennessee rejected the local prosecutor who charged Ms. Moses and the judge who sentenced her.³⁰⁹

Some states have passed laws and constitutional amendments to grant more access to the ballot box for people with criminal convictions, but they do not go far enough; these reforms keep Black women like Ms. Moses and Ms. Mason at risk of being targeted through the criminal legal system.³¹⁰ In Ms. Mason's case, advocates have critiqued the district attorney's decision to request that the Texas Court of Criminal Appeals reverse Ms. Mason's acquittal.³¹¹ The editorial board of the *San Antonio Express-News* queried, "Why would any prosecutor waste time and energy pursuing a conviction on a case that is inconsequential?"³¹² Further, the editorial board admonished, "That this was ever prosecuted is the miscarriage of justice. That it is still being pursued is an abuse of power."³¹³ A former prosecutor exalted the need for "ethical prosecutors" to stop prosecutions like Ms.

partners-others-vote; Natalie Yahr, *Louisiana to Expand Voting Rights for People With Felony Convictions*, SCALAWAG (May 21, 2018), <https://scalawagmagazine.org/2018/05/louisiana-to-expand-voting-rights-for-people-with-felony-convictions>; Image posted by Syrita Steib (@supportsyrita), INSTAGRAM, *Early Voting* (Oct. 25, 2022), <https://www.instagram.com/supportsyrita/p/CkJgGmmt27b>; Laroche, *supra* note 28, at 2490–92; Alex Burness, *The Michigan Jail that Candidates Keep Visiting*, BOLTS (Nov. 26, 2024), <https://boltsmag.org/flint-michigan-jail-candidate-forums>.

³⁰⁹ The person elected to become the prosecutor was a former law school professor who campaigned in opposition to the prosecutor's false narratives of Ms. Moses's guilt. Levine, *supra* note 19.

³¹⁰ Nicole D. Porter et al, *Out of Step: U.S. Policy on Voting Rights in Global Perspective*, SENT'G PROJ. (2024), <https://www.sentencingproject.org/publications/out-of-step-u-s-policy-on-voting-rights-in-global-perspective>. For example, in 2021, the Texas Legislature modified its voter fraud statute to include a mens rea of intentionality, meaning a prosecutor must prove that a person intended to vote when they knew they were ineligible to do so. TEX. CODE ANN. § 64.012(a)(1) (2021) ("A person commits an offense if the person knowingly or intentionally . . . votes or attempts to vote in an election in which the person knows the person is not eligible to vote."). The state required that prosecutors provide more evidence than merely that a person cast a provisional ballot to prove a person knowingly committed an offense. *Id.* § 64.012(c). Ms. Mason awaits the resolution of her yearslong criminal case. Even though the state legislature had enacted these measures in response to her case, they were not enough to release Ms. Mason from having to continue to resist the prosecutor's charges. Laroche, *supra* note 189, at 666.

³¹¹ Express-News Editorial Bd., *supra* note 20.

³¹² *Id.*

³¹³ *Id.*

Mason's case from occurring.³¹⁴ A prosecutor's duty is to seek justice; charging individuals with registration and voter fraud in these instances brings into question whether prosecutors are truly abiding by that ethical duty.³¹⁵

Lawyers can and should address these miscarriages of justice through pro bono, or free-of-charge, representation. Whether faced with charges in the criminal legal system or the administrative legal system, people should not have to fear punishment for engaging in political participation, and they should not have to do so without zealous representation. With so many public defender offices overwhelmed by cases, local and state bars should create pro bono projects to defend the voting rights of individuals in these situations. Defending Black women's political power is crucial to ensuring states uphold the rights Black women are supposed to have. Rather than allow state actors to use the legal system to criminalize and target Black women, lawyers must work to provide the justice the legal system purports to offer. Lawyers should collaborate with people who are directly impacted by slavery's afterlife, community organizers, and advocacy groups to develop potential impact litigation and other advocacy tools to ward against state actors' continued use of voter exclusion laws to ensnare Black women.³¹⁶

³¹⁴ Gregory Nolan, *A Reversal Cannot Undo the Damage Caused by This Voting Fraud Case*, N.Y. TIMES (Apr. 4, 2024), <https://www.nytimes.com/2024/04/04/opinion/texas-florida-crystal-mason.html> ("It is unjust that some people might not vote because reckless prosecutions like Ms. Mason's intimidate them. As her case demonstrates, courts cannot stop these injustices from happening; only ethical prosecutors with a firm commitment to safeguarding constitutional rights can do that."). People targeted by prosecutors in this way should be able to bring malicious prosecution claims and to file complaints against these prosecutors.

³¹⁵ See *Criminal Justice Standards for the Prosecution Function*, Am. Bar. Ass'n 3-1.2(b) ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances."); Tamika Griffin Moses, *No Knock? No Case: Prosecutorial Deterrence as a Countermeasure to No-Knock Warrants*, 2025 UTAH L. REV. 337, 373–74 (2025).

³¹⁶ Deborah N. Archer & Kele S. Williams, *Making America "The Land of Second Chances": Restoring Socioeconomic Rights for Ex-Offenders*, 30 N.Y.U. REV. L. & SOC. CHANGE 527, 546–48 (2006); see also *id.* at 560–82 (analyzing and offering potential state constitutional and statutory civil rights challenges attorneys could bring in state courts to "dismantle the labyrinth of collateral sanctions [that] . . . continue to have a

As Hasen has noted, “Legal change alone is not enough because rules for conducting fair elections are not binding without a deeper commitment to the rule of law.”³¹⁷ Those who can vote should elect candidates who do not use voter fraud rhetoric. As an example, both the prosecutor who charged Pamela Moses and the judge who sentenced her lost their elected seats in primary or general elections.³¹⁸ The less power and authority people who support voter exclusion based on criminal convictions maintain, the more people who resist may work to dismantle voter exclusion schemes and criminalization of the vote. Additionally, the community efforts toward voter emancipation reduces the risk of reincarceration for Black women seeking to vote.

Along with allied individuals and organizations, Black women’s efforts have helped to combat voter exclusion based on criminal convictions and move the United States towards voter emancipation. In doing so, Black women assert their own humanity and criticize policymakers, media, and society more generally for allowing the afterlife of slavery to exist today. Along with removing the disenfranchisement maze, the bigger task is eliminating the domination that continues today. More needs to be done to erase this shadow of slavery from the United States’ fabric because working “towards a horizon of lasting freedom,” as the Black women described in this Article have done and continue to do, does not mean the horizon of freedom is within grasp without action, resistance, and relieving Black women of the need to resist.³¹⁹

devastating impact on . . . people who are released from prison each year and on the communities they call home”).

³¹⁷ Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. F. 265, 294, 299–301 (2022) [<https://doi.org/10.2139/ssrn.3926381>] (recommending legal changes and political action to avert future attempts to subvert elections and ensure fair election administration).

³¹⁸ Levine, *supra* note 19.

³¹⁹ Riley Case, *supra* note 166, at 334; Brandon Hasbrouck, *Prisons as Laboratories of Antidemocracy*, 133 YALE L. J. 1966, 2015 (2024) (“To this end, it should be conceived as a part of the struggle for abolition democracy. Abolition democracy is the establishment of life- and liberty-affirming institutions to ensure that all people have the economic, social, and legal resources to allow them to participate in all significant aspects of public life freely, actively, and conscientiously. Abolition democracy would involve novel legal, economic, and social institutions, broadly rebuilding the structures through which we interact with each other and our society.”).

CONCLUSION

The measures this Article outlined would offer Black women protection from powerful state actors seeking to criminalize their desire to engage in the political process and gain their voter emancipation. Regarding historical slavery, the nation endured four years of war before the legal act of enslaving Black people ended, but then slavery's afterlife emerged. For Black women today, use of the political process, not violence, is needed to abolish voter exclusion based on criminal convictions and the afterlife of slavery.³²⁰ More than likely, a movement of resistance-minded people will push to abolish these voter exclusion schemes and to grant the right to vote for all. That said, even once we have achieved voter emancipation in the context of voter exclusion based on criminal conviction, other barriers to accessing the ballot box will still exist. Because states across the nation have imposed rules and restrictions on when, how, and where people may vote, true voter emancipation requires greater political participation. Justice and diversity advocates must stress the importance of access to opportunities for all.³²¹ Further, unless we abolish discriminatory and oppressive regimes and laws altogether, history will continue to repeat itself and the shadow of slavery will persist. And Black women will continue to commit proactive and

³²⁰ On January 6, 2021, insurrectionists stormed the U.S. Capitol with the hope of stopping the validation of the 2020 presidential election. Select Comm. To Investigate the Jan. 6th Attack on the United States Capitol, *About*, WEBHARVEST.GOV (Dec. 24, 2022, at 17:32 ET), <https://www.webharvest.gov/congress117th/20221224173503/https://january6th.house.gov/about>. While they used weapons and caused serious injuries and death during this attack, to the author's knowledge, no group has suggested employing violent tactics to oppose voter suppression based on criminal convictions. President Donald J. Trump has granted clemency and is considering compensating individuals convicted in federal court for their participation in the insurrection. Seb Starcevic, *Trump Floats Possibility of Compensation for Jan. 6 Rioters*, POLITICO (Mar. 25, 2025, at 11:00 ET), <https://www.politico.com/news/2025/03/25/trump-floats-possibility-of-compensation-for-jan-6-rioters-00250063>; Alan Feuer, *Already Pardoned by Trump, Jan. 6 Rioters Push for Compensation*, NY. TIMES (Aug. 31, 2025), <https://www.nytimes.com/2025/08/31/us/politics/trump-jan-6-rioters-compensation.html> (describing insurrectionists' effort to obtain reparations from the federal government because of "their suffering and that of their families").

³²¹ See, e.g., Errin Haines, *What It Takes to Defend Diversity*, 19TH NEWS (Oct. 19, 2023, at 10:33 ET), <https://19thnews.org/2023/10/dei-diversity-lawsuits-equity> (quoting Stacey Abrams, who stated, "We are made stronger as a nation when we support others having access. Mobilization has to come from every person that wants to espouse the fundamental American values that we are a diverse nation that believes in equal access and equal opportunity and that everyone has an opportunity to participate.").

reactive acts of resistance against slavery's afterlife. As the song "Freedom" exalts us to acknowledge, Black women "need freedom, too."³²²

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³²² Knowles, *supra* note 7.