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I. Introduction

African Americans have pursued equal political participation since before the Civil War.¹ But the federal, state, and local governments of the United States have suppressed, and continue to suppress, African American votes and African American political power. The United States did not explicitly prohibit states from discriminating against African American male voters until almost a century after the nation's founding, and it denied African American women this protection from discrimination for nearly a half century more.²

After the United States amended the Constitution to protect the voting rights of American citizens against racial and gender discrimination, for African Americans, this right existed only on paper for most of American history. Whites terrorized African American voters with violence to prevent them from voting while federal, state, and local governments ignored the violence, failed to prosecute offenders, or participated in the violence themselves.³

States, especially in the South, passed vagrancy and curfew laws to criminalize African Americans, strip away their right to vote, and prevent them from organizing politically.⁴ States found legal loopholes for the voting protections in the U.S. Constitution, including literacy tests, poll taxes, and other devices used to prevent African Americans from voting in elections.⁵ States also barred African Americans from serving on juries,⁶ effectively denying African Americans other opportunities to serve in civic and public life.

These restrictions secured the power of white supremacists in local, state, and federal government, allowing them to block hundreds of civil rights laws and rewrite many of the country's most important pieces of legislation to exclude or discriminate against African Americans.⁷ Over centuries, as African American activists struggled and made advances towards equal political participation, federal, state, and local governments throughout the United States continued to pass laws, issue court decisions, or take actions to smother African American political power.⁸

In recent years, the Supreme Court has issued decisions eliminating the protections of the Voting Rights Act,⁹ as federal, state, and local officials have continued to take actions that impair African Americans' ability to vote



and express their political voice. Despite the historical advancements African Americans have made in political participation, African Americans remain underrepresented, both in elected office¹⁰ and in the policies enacted to meet African American communities' needs.¹¹

California imposed similar restrictions on African American political participation throughout its history.¹² Though California professed to be a free state when it joined the union, white and African Americans did not possess the same freedoms. California refused to ratify the Fourteenth and Fifteenth Amendments for nearly a century,¹³ and it built many of the same barriers to African American political participation as those used in the South, such as poll taxes, literacy tests, and the disenfranchisement of people convicted of felonies.¹⁴ The state also enacted other legal barriers, such as its law banning any non-white person from testifying in any

court case involving a white person.¹⁵ While California eventually eliminated many of these restrictions,¹⁶ its adoption of these discriminatory practices has had longstanding effects on Black political participation, representation, and the current inequalities that persist within the state.¹⁷

This chapter begins in section II by discussing the long history of white officials portraying African American political participation as a threat to undermine African American political power and maintain racial subordination. Section III discusses the early history of African American political participation, from America's founding to the end of Reconstruction. Section IV and V describes the many devices that local, state, and federal officials have used to suppress African American political power, as well as the voting rights legislation that the United States and California have enacted after centuries of African American sacrifice and struggle. This chapter ends in Section VI by describing the consequences of both past and present efforts to suppress African American political participation, and how the exclusion of African Americans from political power have produced deep inequalities in the policies that shape America and the lives of African Americans.

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II. Political Demonization of African Americans

White politicians have long portrayed African American political participation as a threat in order to undercut African American political power and maintain the racial hierarchy of enslavement, even after Emancipation.¹⁸

During and after Reconstruction, white southern Democrats used fears of African American political power to propel themselves into office.¹⁹ For example, in 1870, West Virginia Democrats used the ratification of the Fifteenth Amendment to provoke fear that African Americans would threaten the “white man’s government.”²⁰ After Democrats won the governor’s seat and control of the state legislature in West Virginia, one Republican observed that “[h]ostility to negro suffrage was the prime element of our defeat.”²¹ In 1901, the President of the Alabama Constitutional Convention warned against the “menace of negro domination” to justify the state’s efforts “to establish white supremacy in this State.”²²

White politicians continued to employ the same tactics throughout the 20th century and into the 21st century.

Despite the nonviolent protests led by Dr. Martin Luther King, Jr. and others during the civil rights movement in the 1950s and 1960s, white Americans portrayed African American civil rights activists as violent rioters and criminals.²³ Exploiting this racist imagery, then-Senator Richard Nixon promised “law and order” during the presidential campaign of 1968, preying on white fears of societal upheaval amidst the civil rights movement.²⁴ This move contributed to Nixon’s victory in the 1968 election, beginning what became known as the “Southern Strategy”: the Republican strategy to win votes from the South by appealing to the racial prejudice of white southerners.²⁵

In 1981, Republican campaign strategist Lee Atwater described the evolution of the Southern Strategy, shifting from express racial discrimination to more indirect dog whistles: “You start out in 1954 by saying, ‘Nigger, nigger, nigger.’ By 1968 you can’t say ‘nigger’—that hurts you, backfires. So you say stuff like, uh, forced busing, states’ rights, and all that stuff, and you’re getting so abstract. Now, you’re talking about cutting taxes, and all these

things you're talking about are totally economic things and a byproduct of them is, [B]lack get hurt worse than whites.... 'We want to cut this,' is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than 'Nigger, nigger.'"²⁶

Lee Atwater continued this strategy in the presidential election of 1988. With George H.W. Bush trailing his rival by 15 points in the polls, Atwater convinced the campaign to shift gears and go on the attack.²⁷ The weapon they would use: an African American man named Willie Horton.²⁸

Released from penitentiary in the state governed by Bush's rival, Willie Horton was convicted and incarcerated for sexually assaulting a white woman.²⁹ Preying on stereotypes and fears of African American criminality and African American assault on white womanhood, Atwater and the Bush campaign played television ads prominently displaying Horton's African American face over ominous warnings, to great success. In focus groups, half of prospective voters almost immediately switched to supporting Bush after seeing the ad.³⁰ In practice, the

ad helped transform Bush's 15 point deficit into a presidential victory, 426 electoral votes to 111.³¹ When critics pointed out the racial fearmongering of the Horton ad, the Bush campaign tried to distance itself from it.³²

The federal government erased the humanity of enslaved Black people in many ways. The 1850 and 1860 federal censuses did not list most enslaved people by their own name, but by the name of their enslavers.

Today, the same stereotypical imagery persists in American politics. Echoing the language of elections past, Donald Trump declared himself the "law and order candidate."³³ After the police murder of George Floyd in the summer of 2020, Trump called protesters in Minnesota "thugs" and said that "when the looting starts, the shooting starts," using the exact same phrase that a white Miami police chief repeated in response to African American protestors in 1968.³⁴ When peaceful protesters marched in D.C., the Trump administration met those protests with tear gas, smoke bombs, and beatings.³⁵

III. Reconstruction and the Constitution

Nationally

From its beginning, the United States excluded enslaved African American people from American citizenship, declining to count them as full people.³⁶ As discussed in Chapter 2, Enslavement, in 1789, the U.S. Constitution included a "Three Fifths Clause," counting enslaved African American persons as "three[-]fifths of all other persons" for the purpose of establishing the number of representatives each state would have in Congress, as well as the number of electoral votes each state would cast in a presidential election.³⁷

On the one hand, the Three-Fifths Clause dehumanized enslaved African Americans by not counting them as a full person. On the other hand, by allowing proslavery southerners to partially count enslaved people toward their total number of electoral votes and representatives in Congress, even though enslaved people could not vote or express any political voice, the Constitution gave the states that enslaved them much more power than they would have had otherwise.

For example, southerner Thomas Jefferson would not have won the presidential election in 1801 without the additional electoral votes given to southern states based

on the number of African Americans they enslaved within their borders.³⁸ Further, the manner in which the federal government counted the enslaved population of African Americans erased their humanity. The 1850 and 1860 federal censuses did not list most enslaved people by name, as they did for white Americans, but by the name of their enslavers.³⁹

While denying enslaved African Americans their citizenship, the United States also denied free African Americans the right to vote. When the Framers signed the Constitution in 1787, they left voting laws to the states—whose laws protected the right to vote only for white, male property owners.⁴⁰ Though a few northern states would eventually extend the right to vote to African Americans, by the time of the American Civil War, most states, including every southern state, prohibited African Americans from voting.⁴¹

During Reconstruction (1865 to 1877), the federal government aimed to give newly freed African Americans access to basic civil rights. The Civil Rights Act of 1866 granted citizenship to anyone born in the United States regardless of color, or previous enslavement.⁴² The Fourteenth Amendment made birthright

citizenship and civil rights permanent.⁴³ By achieving these changes, African Americans not only redefined their own citizenship—they redefined citizenship for all Americans.⁴⁴ Birthright citizenship might not have come into existence in the United States without African Americans' struggle against slavery, and it helped open the door to citizenship for all immigrants and their U.S. born children.⁴⁵

Congress also recognized that political rights were essential to African American civil and economic rights,⁴⁶ so the Fifteenth Amendment was ratified in 1870 which prohibited states from discriminating against voters based on "race, color, or previous condition of servitude."⁴⁷

However, the Fourteenth and Fifteenth Amendments had limitations. The Fourteenth Amendment did not protect African Americans' right to vote.⁴⁸ Instead, the Fourteenth Amendment only punished states that legally denied male citizens the right to vote by reducing their number of representatives in Congress,⁴⁹ a penalty that has never been enforced.⁵⁰ While the Fifteenth

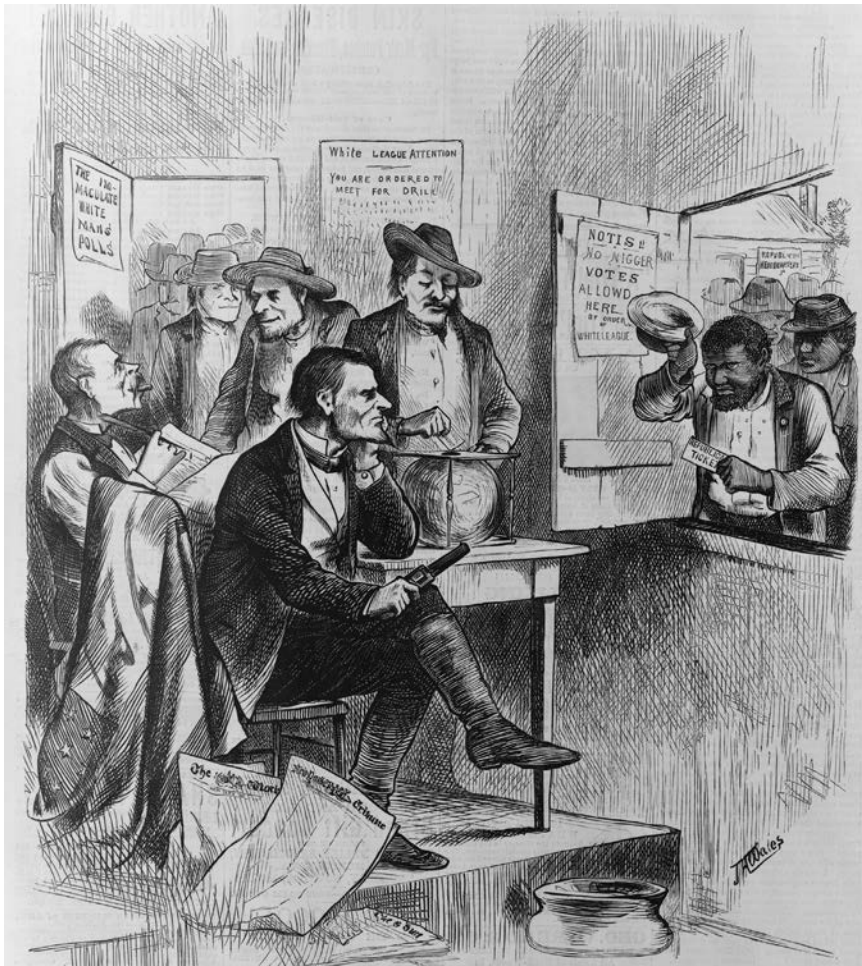
Amendment prohibited states from denying a person's right to vote based on race, it contained no enforcement mechanism without an act of Congress.⁵¹

In 1870 and 1871, Congress passed several Enforcement Acts, giving the federal government the authority to prosecute violations of the Fifteenth Amendment.⁵² But in 1875, the U.S. Supreme Court held that because the Fourteenth and Fifteenth Amendments only empowered the federal government to prohibit discrimination by the states, it did not empower the federal government to prosecute the private white militants who used racial terror to suppress African American voting.⁵³ And to the extent that the Fifteenth Amendment protected African American men in the right to vote, it did not extend the same protection to African American women, who would have to wait another half century for the Nineteenth Amendment in 1920.⁵⁴

African Americans responded by taking full advantage of their new political rights. African Americans held conventions across the country⁵⁵ and participated in state constitutional conventions to secure their voting rights.⁵⁶ Republicans in Congress increasingly began to believe that they needed to overhaul southern governments and ensure that ex-Confederates did not return to power.⁵⁷ As a result, Congress passed a series of laws from 1867 to 1868 called the Reconstruction Acts, which required most ex-Confederate states to hold constitutional conventions and write new state constitutions acknowledging African American civil rights.⁵⁸

The Reconstruction Acts guaranteed African American men the right to vote for constitutional delegates and on the new constitutions.⁵⁹ Across the South in 1867, African American turnout ranged from 70 percent in Georgia to 90 percent in Virginia.⁶⁰ African American votes were nearly unanimous in support of ballot measures to hold constitutional conventions to amend their state constitutions to guarantee equal rights.⁶¹ Hundreds of African American men served in the southern state constitutional conventions under the Reconstruction Acts, and they participated alongside white Republicans in writing new constitutions which protected equal

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"Every thing points to a democratic victory this fall" (Oct. 31, 1874)

voting rights, civil rights, and educational rights (although usually in segregated facilities) for African Americans.⁶² By 1868, more than 700,000 African American men were registered to vote in the South.⁶³ One white Republican in Alabama said that African Americans “voted their entire walking strength—no one stayed at home that was able to come to the polls.”⁶⁴

With African American voters came African American elected officials. During Reconstruction, over 1,400 African Americans held federal, state, or local office, and more than 600 served in state assemblies.⁶⁵ Many of these

White politicians—including Republicans who had favored Emancipation and Black enfranchisement—treated Black elected officials as junior partners in government. In 1874, 16 Black politicians in Louisiana publicly complained of being excluded from “any knowledge of the confidential workings of the party and government” and “not infrequently humiliated in our intercourse with those whom we have exalted to power.”

new African American officials were formerly enslaved, and many took seats formerly held by men who had enslaved others.⁶⁶ The ranks of elected African American officials included 16 African American men elected to Congress, 14 to the U.S. House of Representatives and two to the U.S. Senate.⁶⁷

The election of African Americans into office, however, did not translate to full political representation. African Americans took a lower share of elected seats in both state and federal office relative to their proportion of the electorate, and rising presence in office did not always carry greater power at the highest levels of state government.⁶⁸ White politicians—including Republicans who had favored Emancipation and African American enfranchisement—treated African American elected officials as junior partners in government.⁶⁹ In 1874, 16 African American politicians in Louisiana publicly complained of being excluded from “any knowledge of the confidential workings of the party and government” and “not infrequently humiliated in our intercourse with those whom we have exalted to power.”⁷⁰

Over time, white northern support for Reconstruction collapsed. Southern Democrats intensified violent insurrection, and white northerners tired of the economic and military costs necessary to enforce equal rights.⁷¹ An economic depression in the 1870s further weakened

the federal government’s resolve and undermined support for pro-Reconstruction officials in the south.⁷² To regain support, President Ulysses S. Grant shared power with southern Democrats who opposed Reconstruction, causing one northerner to complain that the government was filling “every Dep[artment]” with southern Democrats to “placate the rebels and get their votes.”⁷³

These pressures came to a head in the presidential election of 1876, when both the candidates—Republican Rutherford B. Hayes and Democrat Samuel Tilden—claimed to have won due to contested votes in the southern states where

election violence and fraud was high.⁷⁴ Southern Democrats contested the results, threatening revolt.⁷⁵ To avoid another civil war, the Republicans and Democrats reached a compromise: the Democrats stopped contesting the presidential election and the Republicans agreed to withdraw federal troops from key locations in the south, effectively ending Reconstruction.⁷⁶ As the chairman of the Kansas state Republican committee wrote, “I think the policy of the new administration will be to conciliate to the

white men of the South. Carpetbaggers to the rear, and niggers take care of yourselves.”⁷⁷ An article published in *The Nation* predicted, “[t]he negro... will disappear from the field of national politics. Henceforth, the nation, as a nation, will have nothing more to do with him.”⁷⁸

California

The State of California entered the union in 1850, and its constitution proclaimed that “neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.”⁷⁹ But that very same document gave only “white male citizen[s]” the right to vote.⁸⁰ From the beginning, freedom in California meant something different for white and African American Californians. As detailed in Chapter 2 Enslavement, despite California’s prohibition on slavery, enslavers forced hundreds of enslaved African Americans into the state.⁸¹ California became one of the few free states to pass a fugitive slave law, authorizing and even enforcing the ability of white Californians to kidnap and traffic African American Californians to southern enslaving states.⁸²

Meanwhile, free African American Californians faced other restrictions on their ability to participate in civic life. California banned African Americans and other nonwhite people from testifying in court against a white person.⁸³ In

some cases, this law allowed a white man to get away with murder. In 1854, the California Supreme Court overturned the murder conviction of a white man because he was convicted based upon the testimony of Chinese witnesses.⁸⁴

Admitting that California designed the law to protect white defendants from justice, California's Supreme Court defended the law as a matter of public policy, warning that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls," a prospect that the Court viewed as an "actual and present danger."

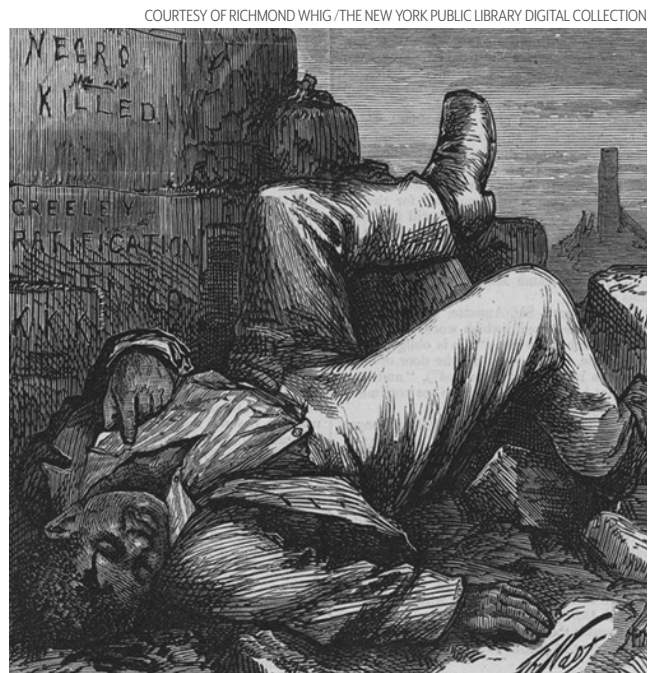
Reversing the murder conviction, the California Supreme Court explained: "In using the words, 'No Black, or Mulatto person, or Indian shall be allowed to give evidence for or against a White person,' the Legislature... adopted the most comprehensive terms to embrace every known class or shade of color, as the apparent design was to protect the White person from the influence of all testimony other than that of persons of the same caste."⁸⁵ Admitting that California designed the law to protect white defendants from justice, California's Supreme Court defended the law as a matter of public policy, warning that allowing any non-white person to testify "would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls," a prospect that the Court viewed as an "actual and present danger."⁸⁶

One case drew public attention to the law and its effects on African American Californians. In 1861, a white man named Rodney B. Schell robbed a Black-owned business.⁸⁷ When George W. Gordon, an African American barber, complained to the police, Schell shot and murdered Gordon in his shop.⁸⁸ At Schell's murder trial, his attorneys used California's ban on non-white testimony to exclude the prosecution's key witness, hiring two "hairologists" who examined the witness's hair under a microscope and claimed that the witness had "African blood in his veins."⁸⁹ Consequently, the court excluded the key testimony, resulting in Schell's conviction for second-degree murder, rather than first-degree murder.⁹⁰

A Black-owned local newspaper called the case a "Mockery of Justice" in "one of the most deliberate and cold-blooded murders that ever disgraced California, even in her rudest and most lawless days."⁹¹ One California legislator observed that Schell had murdered Gordon, knowing that

African American testimony against him would be barred in court.⁹² Another legislator proclaimed that the law banning African American testimony served as "a legislative license for the commission of crimes."⁹³ Though the Schell trial generated a firestorm of controversy, California's Legislature refused to change the law that year.⁹⁴

Many other African American Californians suffered crimes without recourse to testimony and justice in court. When Jim Howard, a white man, stole from an African American laundryman named Albert Grubbs, Grubbs testified and helped secure Howard's conviction for grand larceny.⁹⁵ On appeal, the Chief Justice of the California Supreme Court, Stephen J. Field—who would later become a Justice on the U.S. Supreme Court—overturned the conviction, declaring that California's law categorically barred any African American testimony, even if "crime may go unpunished."⁹⁶



"One vote less" (1872)

Discriminated against by both the laws and those who would break it, many African American Californians, like Peter Lester—who was assaulted and robbed in his store but unable to testify against the perpetrators—left the state.⁹⁷ From San Francisco alone, some 200 African American families, a substantial portion of the 4,000 total African Americans who had settled in California

between 1850 and 1860,⁹⁸ left during the 1850s in a mass exodus to British colonies in what is now Canada.⁹⁹

Other African American Californians organized in response to these restrictions. African American citizens formed the Colored Executive Committee and founded their own weekly newspaper, *Mirror of the Times*.¹⁰⁰ Drawing from African American activism in other parts of the nation, African American Californians held the first of four “Colored Citizens’ Conventions” in 1855 at the St. Andrews African Methodist Episcopal Church in Sacramento.¹⁰¹ At this convention and later meetings, they advocated against slavery, urged repeal of California’s law barring African American testimony against whites in state courts, and petitioned for the right to vote.¹⁰²

After an eight-year campaign, convention delegates convinced the California Legislature to repeal its ban on African American testimony in 1863.¹⁰³ As soon as the ban on African American testimony ended, African American Californians spearheaded legal efforts to protect their rights in court. African American women organized legal efforts to file charges against streetcar drivers who refused to pick up African American riders or harassed them on the car.¹⁰⁴

In other cases, African American testimony proved crucial to preventing African American Californians from being enslaved.

Thirteen years after California entered the union as a free state, in 1863, an enslaver purchased and trafficked a 12-year-old African American girl, Edith, selling her to a farmer in Sacramento County.¹⁰⁵ But a free African American man named Daniel Blue intervened on her behalf, filing a case in court.¹⁰⁶ With his testimony and the testimony of other African American citizens, he persuaded the Sacramento probate judge to remove Edith from the enslaver’s custody.¹⁰⁷

After the repeal of the ban on African American testimony in 1863,¹⁰⁸ and the abolition of slavery in 1865,¹⁰⁹ African American activists in California turned their attention to voting rights. The California Colored Citizens’ Convention of 1865 petitioned the state legislature for a constitutional amendment to give African Americans voting rights.¹¹⁰ But when a Republican State Senator presented the petition to the state legislature, its members never discussed it.¹¹¹

In the following two years, African American activists drafted another petition asking the state Legislature to

grant voting rights to African American men, if approved by a two-thirds vote by the state assembly and the state senate.¹¹² But by then, the Democrats had taken over the legislature after campaigning on anti-African American and anti-Chinese platforms.¹¹³ African American activists could not find a single member of the state legislature who would agree to present the petition for the state legislature’s consideration.¹¹⁴

California continued to deny equal rights for its African American citizens. When the United States adopted the Fourteenth Amendment to the United States Constitution in 1868, guaranteeing the equal protection of law to African Americans, the California Legislature ignored the Amendment and never ratified it.¹¹⁵ Similarly, California later refused to ratify the Fifteenth Amendment, which prohibited states from discriminating against voters on the basis of race.¹¹⁶

California continued to deny equal rights for its Black citizens. When the United States adopted the Fourteenth Amendment to the United States Constitution in 1868, guaranteeing the equal protection of law to African Americans, the California Legislature ignored the Amendment and never ratified it. Similarly, California later refused to ratify the Fifteenth Amendment, which prohibited states from discriminating against voters on the basis of race.

Nevertheless, enough states voted for the Fifteenth Amendment to make it the law of the country in 1870, and upon its ratification,¹¹⁷ African American Californians registered to vote in droves.¹¹⁸ But California officials openly refused to abide by the Fifteenth Amendment.¹¹⁹ California’s Attorney General Joseph Hamilton instructed county clerks not to register African American voters until Congress passed legislation commanding them to do so.¹²⁰

When African American Californians and their allies protested in response, in some areas, county clerks caved to public pressure and eventually permitted African American Californians to vote.¹²¹ Others resisted more firmly. In southern California, Louis G. Green was the first African American Californian in Los Angeles who tried to register to vote.¹²² When the Los Angeles County Clerk refused to allow him to do so, Green filed suit in court.¹²³ The County Judge—who was the brother-in-law of the County Clerk being sued—upheld the Clerk’s refusal to register Green.¹²⁴

Recognizing the resistance to African American voting in California and other states, Congress enacted the Enforcement Act of 1870, a federal law imposing penalties for states who violated the Fifteenth Amendment.¹²⁵ Only after the passage of this law did California officials submit and allow African American men to register to

vote.¹²⁶ It would take California nearly another decade to change its constitution to partly conform to the Fifteenth Amendment's requirements in 1879,¹²⁷ and nearly another century to formally ratify the Fourteenth and Fifteenth Amendments to the U.S. Constitution in 1959 and 1962, respectively.¹²⁸

IV. Devices Used to Suppress African American Political Participation

Though African Americans strove to build and maintain the promise of African American citizenship after Emancipation, the end of Reconstruction left them unprotected against the white supremacists who had previously enslaved them. After Reconstruction, white Americans in both the North and South employed a host of devices to reassert white supremacy and suppress African American political power. As a result, African Americans who had already been voting for many years were barred from voting.

Racial Terror to Suppress African American Political Power

As Chapter 3 Racial Terror details, white Americans resorted to kidnapping, mass murder, and other forms of racial terror to reassert white supremacy and destroy African American political power all across the southern states.¹²⁹ The federal and Republican-run state governments tried to suppress this violence, but white local officials and law enforcement across the South often turned a blind eye or even participated in the violence themselves.¹³⁰ Federal and state officials themselves have used their power to target and terrorize civil rights leaders.¹³¹

As violence intensified in the South President Grant's cabinet urged him to "wash the hands of the Administration entirely of the whole business." For much of America history, the federal government sacrificed the lives and rights of African Americans in exchange for political stability.

Even during Reconstruction, about 10 percent of African American political officials reported receiving violent threats and suffered physical assaults.¹³² At least 35 African American officials were murdered by the Ku Klux Klan or similar terrorist organizations.¹³³ Though the federal government intervened to stop early violence in Louisiana,

white Americans in both the North and South began to protest federal military intervention in local affairs.¹³⁴ According to one historian, "[t]he spectacle of soldiers 'marching into the Hall... and expelling members at the point of bayonet' aroused more Northern opposition than any previous federal action in the South."¹³⁵

President Grant's cabinet urged the President to "wash the hands of the Administration entirely of the whole business," referring to the repeated white insurrections in Louisiana, and white political backlash made Congressional Republicans wary of further military intervention in the south.¹³⁶ When the Republican Governor of Mississippi, a member of Grant's own party, requested federal aid against white supremacist insurrection, President Grant wrote, "[t]he whole public are tired out with these annual autumnal outbreaks in the South... [and] are ready now to condemn any interference on the part of the Government."¹³⁷

For much of American history, then, the federal government sacrificed the lives and rights of African Americans for political stability while white Americans in the South wrought racial violence to oppress African Americans.

Despite the many threats to their lives, African American activists organized in response to these campaigns of racial terror. They formed organizations like the National Association for the Advancement of Colored People (NAACP), a group of African American intellectuals and activists who partnered with white liberals to pursue African American civil rights and equality, pursuing

legal challenges against many of the devices described throughout this chapter.¹³⁸ State governments sought to sabotage these efforts. Mississippi, for instance, created the Mississippi State Sovereignty Commission, an agency created to resist the civil rights movement and preserve racial segregation.¹³⁹ The Commission planted clerical

workers in the offices of civil rights attorneys, spied on civil rights organizations, obstructed African American voter registration, and encouraged police harassment of African Americans.¹⁴⁰

The federal government, at times, targeted and terrorized civil rights leaders as well. During the 1950s and 1960s, for instance, when Dr. Martin Luther King, Jr. urged nonviolent protest to pursue racial justice, Federal Bureau of Investigation (FBI) Director J. Edgar Hoover viewed Dr. King as a communist threat and ordered the electronic surveillance of Dr. King and his staff.¹⁴¹ While doing so, the FBI produced reports claiming that one of Dr. King's advisors was a communist, suggesting that international communists might be controlling Dr. King.¹⁴² Though the FBI's surveillance uncovered no evidence of communist influence, it uncovered evidence of Dr. King's extramarital affairs, and used this information not only to try and discredit Dr. King as a leader of the civil rights movement, but also to attempt to convince Dr. King to take his own life.¹⁴³ "They are out to break me," Dr. King confided to a friend, "[t]hey are out to get me, harass me, break my spirit."¹⁴⁴

The federal government continued to surveil and sabotage other African American activists and organizations. In the 1960s and 1970s, the federal government took extensive measures to surveil the Black Panther Party, using undercover agents to infiltrate the group and sow discord, contributing to its collapse.¹⁴⁵ Though public exposure of the FBI's surveillance activities forced the government to enact several reforms, those reforms weakened over time, and the FBI has reportedly resumed similar programs surveilling African American activists, including those in the Black Lives Matter movement.¹⁴⁶

Black Codes and Vagrancy Laws

As discussed later in Chapter 11 An Unjust Legal System, southern states passed a series of laws between 1865 and 1866—which historians refer to collectively as the “Black Codes”—to criminalize freed African Americans for engaging in ordinary activity and force them back into forms of enslaved labor.¹⁴⁷ During Reconstruction, Republicans in Congress managed to remove these Black Codes with the Civil Rights Act of 1866 and the Fourteenth Amendment.¹⁴⁸ But after the end of Reconstruction, former Confederate states began passing a flurry of laws similar to the post-Civil War Black Codes, that while racially neutral on their face, added up to slavery-like conditions in practice.¹⁴⁹ Every former Confederate state except Tennessee enacted

vagrancy laws, between 1890 and 1909, which criminalized “idle” behavior and forced African Americans back into conditions of enslavement,¹⁵⁰ limiting the forma-

When Mississippi adopted literacy tests, among other voting restrictions, in its 1890 constitutional convention, the president of the convention declared: “Let us tell the truth if it bursts the bottom of the Universe. We came here to exclude the negro.”

tion of African American businesses and spaces that provided the foundation for African American community and political consciousness.¹⁵¹ By criminalizing African Americans for everyday conduct, these laws suppressed African American political participation in two ways: African Americans convicted of a crime could not vote or serve on juries, and African Americans were prevented from organizing to protest these laws, because these laws made such gatherings illegal.¹⁵²

Literacy Tests

Because the Fifteenth Amendment to the United States Constitution declared that a person's right to vote shall not be denied “on account of race, color, or previous condition of servitude,”¹⁵³ states created many laws designed to block African American voting without referring to race.¹⁵⁴ One of these methods was the literacy test: voting registrars or poll workers would test a person's reading or writing capabilities before permitting them to register or vote. Usually, these tests required a prospective voter to either write down a certain piece of text (such as a part of the Constitution) or to write down answers to written questions.¹⁵⁵ Following Reconstruction, at least 21 states in both the North and South used literacy tests to deny African Americans their voting rights.¹⁵⁶

As described in Chapter 6 on Separate and Unequal Education, states and local governments deprived African Americans of educational resources and opportunities during enslavement and after Emancipation.¹⁵⁷ Consequently, states adopted literacy tests knowing that such barriers would primarily exclude African American voters.¹⁵⁸ At the South Carolina constitutional convention of 1895, Senator Ben Tillman explained that the literacy test was intended to take the vote away from “ignorant [B]lacks.”¹⁵⁹ When Mississippi adopted literacy tests, among other voting restrictions, in its 1890 constitutional convention, the president of the convention declared: “Let us tell the truth if it bursts the bottom of the Universe. We came here to exclude the negro.”¹⁶⁰

Even when many African Americans were well-equipped to pass ordinary literacy tests, states excluded African American voters by requiring them to satisfy more complex requirements than those required for white voters;¹⁶¹ asking subjective questions that gave white officials the discretion to exclude African American voters;¹⁶² or requiring African American voters to answer impossible questions, such as “how many bubbles are in a bar of soap?”¹⁶³ One Georgian official boasted, “I can keep the President of the United States from registering [to vote], if I want to. God, Himself, couldn’t understand that sentence [in the literacy test]. I, myself, am the judge.”¹⁶⁴

African Americans challenged these literacy tests in court but met with little success. In 1898, the United States Supreme Court upheld Mississippi’s literacy test in a case called *Williams v. Mississippi*.¹⁶⁵ After an all-white jury convicted Henry Williams, a African American man, of murder, Williams appealed, arguing that he did not receive a fair trial because African Americans were excluded from the jury.¹⁶⁶

Because the jury list was drawn from the state’s voter registries, the Court examined whether Mississippi’s literacy tests had illegally blocked African Americans from registering to vote.¹⁶⁷ The Court approved of the literacy tests, holding that the literacy test did not mention race and therefore did not discriminate based on race.¹⁶⁸ The strategy pursued by Mississippi and other states worked: states could pass racist laws designed to deny African American votes, and so long as the laws did not mention race, those laws would be upheld in court.

With the Supreme Court’s approval, states continued to use literacy tests to restrict African American voting through the 20th century.¹⁶⁹ It took 100 years after the end of Reconstruction for the federal government to permanently ban literacy tests nationwide through an amendment to the Voting Rights Act in 1975.¹⁷⁰ Despite this federal prohibition, some states, like North Carolina, still have unenforceable literacy tests on the books today.¹⁷¹

Thus, while states enacted literacy tests after Reconstruction in the late 1800s, these voting restrictions lasted well until the late 20th century, shaping the lives of Americans who currently live and serve in public office. President Joseph Biden, and at least 80 out of the 100 current U.S. Senators, were alive when literacy tests were still legal in the United States.¹⁷²

Property Requirements and Poll Taxes

States also used property requirements and poll taxes to prevent African Americans from voting.¹⁷³ Beginning in early American colonial history, states required individuals to own a certain amount of land or property before they could vote.¹⁷⁴ After American independence, more states removed or relaxed these laws, and many new states never adopted them at all.¹⁷⁵ But to prevent free African American men from voting, many states began limiting voting only to white men.¹⁷⁶ The Fifteenth Amendment forced states to eliminate this express racial discrimination, but with the end of Reconstruction, states in both the North and South reenacted these property restrictions or created new ones, imposing poll taxes to require potential voters to make a payment before they could cast their ballot.¹⁷⁷

While these laws had the effect of excluding all poor voters—white and African American alike—the law specifically exploited the fact that African Americans, newly freed from slavery, often began their free lives without any wealth, preventing them from affording the costs of the poll tax. Additionally, some states, such as Alabama, required a person to pay poll taxes for prior elections in which they had not voted, a penalty that directly targeted African Americans, who could not have voted until after Emancipation.¹⁷⁸

COURTESY OF ISHIBASHI COLLECTION/CALIFORNIA STATE UNIVERSITY

FOR STATE SCHOOL FUND	KEEP THIS RECEIPT	
	STATE OF CALIFORNIA County of Los Angeles	
	Nº137712	\$2.00
	Received this <u>14</u> day of <u>June</u> A. D. 1914, From <u>K. Ishibashi</u> the sum of TWO DOLLARS for STATE POLL TAX for the year 1914.	
	<u>John A. Hunt</u> County Treasurer.	<u>Edw. Hopkins</u> Assessor.
<u>Walter A. Lewis</u> County Auditor.		By <u>W. A. Brown</u> Deputy Assessor.
WRITE NAME IN FULL		

The receipt of Kumeichichi Ishibashi's payment of \$2 for the State Poll Tax in year 1912.

Despite repeated challenges from civil rights activists, poll taxes remained a persistent barrier to the right to vote until 1965.¹⁷⁹ In 1937, the U.S. Supreme Court upheld the use of state poll taxes, declaring that poll taxes did not deny any constitutional right because the “[p]rivilege of voting is... conferred by the state and... the state may condition suffrage as it deems appropriate.”¹⁸⁰

Recognizing the effects poll taxes had on voting, Congress attempted to ban poll taxes in some fashion in 1942, 1943, 1945, and 1947.¹⁸¹ None of those laws passed the

Senate due to southern senators' use of the filibuster—a Senate rule requiring a two-thirds majority before debate could end and a vote could be taken on a bill.¹⁸² The southern senators' reasoning behind their defense of the poll tax was simple: the poll tax was one of the devices used to suppress African American voters and keep the senators in power.

Although the poll tax affected whites more than African Americans, the southern senators believed that repeal of the poll tax would provide momentum to removing other barriers blocking African American voting in the South.¹⁸³ It took decades more of activism and litigation before Congress prohibited poll taxes in 1965¹⁸⁴ and the Supreme Court ruled poll taxes to be unconstitutional in 1966.¹⁸⁵

Virginia enacted its first challenger law in 1870, a few months after the end of Reconstruction. The state reenacted the law in 1904, following its 1901 to 1902 constitutional convention, which the state held “mainly for the purpose of disenfranchising the Negro voter.”

Challenger Laws and Witness Requirements

To exclude African American voters, states also used “challenger laws” and laws requiring witnesses to attest to a voter's qualifications.¹⁸⁶ Challenger laws allow private citizens to contest another person's qualifications to vote, usually by making a complaint before the local or state officials charged with registering voters or administering the polls during election day.¹⁸⁷ Many states enacted such laws before the Civil War, some as far back as the American Revolution.¹⁸⁸ Following Reconstruction, however, states in both the North and South used these laws to allow white supremacists to challenge, intimidate, and suppress African American votes.¹⁸⁹

Virginia enacted its first challenger law in 1870, a few months after the end of Reconstruction.¹⁹⁰ The state reenacted the law in 1904, following its 1901 to 1902 constitutional convention,¹⁹¹ which the state held “mainly for the purpose of disenfranchising the Negro voter.”¹⁹²

In Florida, lawmakers enacted laws in 1877 requiring voters challenged at the polls to produce two witnesses “personally known” to at least two polling officials.¹⁹³ Because Florida's polling officials were almost exclusively white, few African American citizens could provide witnesses known to them, meaning that Florida's challenger law allowed any white citizen to block an African American voter from casting their ballot.¹⁹⁴ Though

many of these challenger and witness laws have been modified through time, they remain prevalent today: as of 2012, 46 states have laws that permit private citizens to challenge other citizens' voting eligibility.¹⁹⁵

Grandfather Clauses

Many southern states understood that the onerous voting requirements they imposed, if applied fairly, could exclude white voters, too. To ensure that these restrictions primarily excluded African American voters, a half-dozen states in the South created so-called grandfather clauses.¹⁹⁶ Grandfather clauses allowed voters to vote, even if they could not pay the poll tax or otherwise would not have passed a literacy test, as long as they had been entitled to vote prior to 1866 or 1867, or were descended from someone who had been entitled to vote prior to 1866 or 1867.¹⁹⁷

In effect, this meant that African Americans—who had not been eligible to vote prior to 1866 or 1867 in most of these states—would be the ones subject to the new voting restrictions. The Supreme Court ruled these grandfather clauses to

be discriminatory and unconstitutional in 1915.¹⁹⁸ While grandfather clauses had a relatively shorter lifespan than literacy tests or poll taxes, they presented one of many tools used in combination with others to prevent African Americans from exercising their right to vote, revealing how states enacted many of their supposedly race neutral laws with the purposeful design of disenfranchising African American voters.

Exclusion from State Primary Elections

White Americans also prevented African American voters from participating in state party primary elections.¹⁹⁹ Since the late 1890s, political parties in the United States have held primary elections to allow voters to determine the candidates from their party who would run for office.²⁰⁰ In 1910, state legislatures and state Democratic party chapters in the South created the “white primary,” excluding all African American voters from the state primary election process.²⁰¹

For states dominated by a single political party, determining who would run from that party essentially determined who would ultimately hold office. Because Democrats dominated state elections in the South in the late 1800s and early 1900s, the exclusion of African American voters from Democrat state primaries in the South during this period essentially

excluded African Americans from having any say in their elected representatives.²⁰²

The NAACP brought legal challenges against the white primary and won a case in 1927 when the U.S. Supreme Court held it unconstitutional under the Fourteenth Amendment for a state government to pass laws excluding African American citizens from a state primary election.²⁰³ However, because the Fourteenth Amendment applied only to state actions, southern Democratic party leaders skirted around the Supreme Court's decision by excluding African American voters through the rules of its political party, which was considered a private organization.²⁰⁴

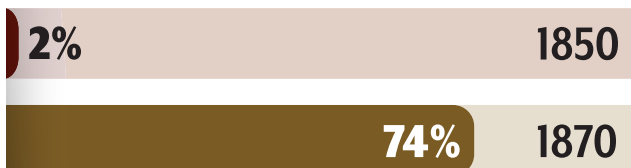
In 1944, the Supreme Court closed the loophole and ruled that states could not allow private political parties to exclude African Americans from voting in state primaries.²⁰⁵ Following the end of the all-white primary, a record 35,000 African Americans voted in the 1948 Democratic primary in South Carolina.²⁰⁶

Laws Disqualifying People Convicted of Felonies from Voting

States throughout the country have long disqualified people convicted of felonies from voting. Together with America's discriminatory criminal justice system, described in Chapter 11, An Unjust Legal system, states throughout America have used these laws to prevent African Americans from voting and continue to do so today.²⁰⁷

Laws denying people convicted of felonies their right to vote have existed since at least the colonial period of American history, finding roots in earlier English, European, and Roman law.²⁰⁸ Although early U.S. state constitutions gave their legislatures the power to pass laws disenfranchising people who had committed crimes, many states—including Alabama, Arkansas, Georgia, Florida, and South Carolina—only passed such laws after the Civil War to deny African Americans their newly gained right to vote.²⁰⁹

NONWHITE PRISON POPULATION ALABAMA



Following Reconstruction, state governments sought to maintain white supremacy by using vagrancy laws, curfews, and other restrictions to target African Americans with criminal laws as a form of social control.²¹⁰ Because states targeted African Americans for prosecution, and because convicted African Americans were stripped of their ability to vote, states effectively used criminal laws to not only control African Americans, but also to deprive them of their right to vote.

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After the Civil War, in many southern states, the percentage of nonwhite people imprisoned nearly doubled between 1850 and 1870.²¹¹ In Alabama, for example, two percent of the prison population was nonwhite in 1850, but by 1870, 74 percent of the prison population was nonwhite, even though the total nonwhite population increased by only three percent.²¹² Ever since the Civil War era, states have imprisoned African Americans at higher rates than white Americans.²¹³ One study examining historical data found that when more of the people imprisoned by a state are African American, the state is significantly more likely to enact laws removing their right to vote if they have been convicted of a felony.²¹⁴

Many states made clear that they targeted African Americans with their laws removing the right to vote from people convicted of felonies. According to the North Carolina Democratic Party's Executive Committee Handbook in 1898, North Carolina's restriction originates from the state's efforts "to rescue the white people of the east from the curse of negro domination."²¹⁵ The Mississippi constitutional convention in 1890 changed its disenfranchising provision from one that included "any crime" to one affecting only certain offenses like burglary or theft, a change that the Mississippi Supreme Court explained as one made "to obstruct" African American voting by targeting certain crimes the state believed that African American residents committed more frequently.²¹⁶

Other southern states expressly tied disenfranchisement to "furtive offenses... peculiar to the Negro's low economic and social status."²¹⁷ Some scholars suggest that because denying the vote for those convicted of crimes was narrower in scope than literacy tests or poll taxes, and easier to justify than grandfather clauses, states used criminal disenfranchisement laws as "insurance"

if courts decided to strike down other, more blatantly discriminatory laws.²¹⁸

Most of these disenfranchisement laws continue to exist across the country in some form to this day. Though the Supreme Court has recognized that “[c]itizenship is not a [right] that expires upon misbehavior,”²¹⁹ the Supreme Court has not extended that same logic to the right to vote.²²⁰

In 1974, the Supreme Court upheld California’s law disenfranchising people convicted of felonies, concluding that the removal of their voting rights is consistent with the Fourteenth Amendment.²²¹ Though the Supreme Court eventually struck down a part of Alabama’s disenfranchisement law a decade later, it only struck down a specific provision—applying to crimes of “moral turpitude”—that it found had the specific intent and impact of preventing African American citizens from voting.²²² In that limited decision, the Court expressly declined to reconsider its decision in *Richardson v. Ramirez*, which continues to generally permit the disenfranchisement of people convicted of felonies.²²³

Today, people convicted of felonies—a disproportionate number of whom are African American—represent the largest single group of Americans disqualified from voting.²²⁴ For example, although the majority of illegal drug users and dealers nationwide are white, three-fourths of all people imprisoned for drug offenses are African American or Latino.²²⁵ Another study found that states with greater African American and Latino prison populations are more likely to ban formerly incarcerated and returning citizens from voting than states with proportionally fewer nonwhites in the criminal justice system.²²⁶

As of 2020, approximately 5.2 million Americans are barred from voting due to laws that disenfranchise citizens convicted of felony offenses.²²⁷ All states but Maine and Vermont have some restriction tied to felony conviction, probation, and parole.²²⁸ And while some states restore the right to vote once people have completed their sentence, these states condition that restoration of rights upon a person paying all fines and fees associated with their sentence, an economic burden that scholars and voting rights advocates have described as a modern day poll tax.²²⁹ In a country that professes a commitment to freedom, the country’s rates of mass incarceration and the corresponding increase in disenfranchisement reflect a conflict between its democratic ideals and its actual practice.

Gerrymandering

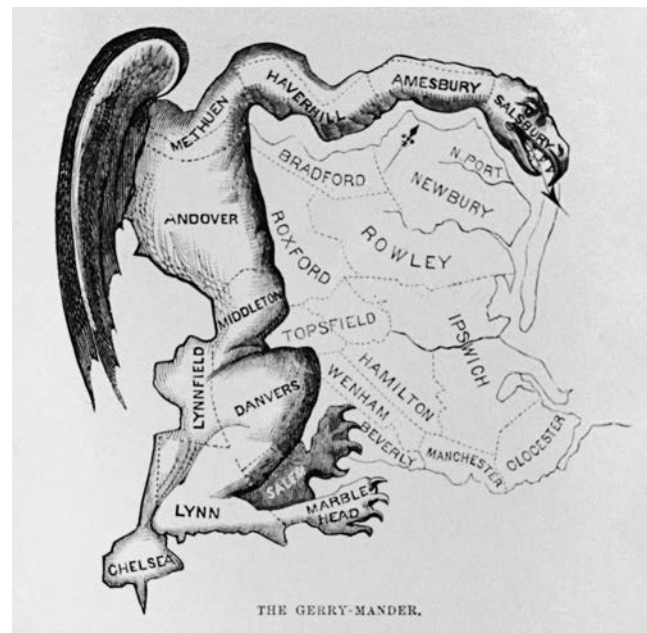
States also manipulated the shape of voting districts, through a process called gerrymandering, to dilute the

voting power of African Americans.²³⁰ Generally, states divide their regions into districts for the election of certain local, state, and federal representatives.²³¹ States can redraw those areas from year to year,²³² and government officials have used this process to substantially dilute and weaken the political power of African Americans.²³³

Ordinarily, states draw electoral districts by drawing generally oval or square-shaped districts of neighboring communities with borders based on geographic barriers, like rivers and highways.²³⁴ However, politicians began manipulating this process by drawing electoral districts in more unnatural shapes to include more voters from a certain race or political party to ensure that group’s victory in an election.²³⁵

This process, known as “gerrymandering,” is named after Elbridge Gerry, an American vice-president who, as Massachusetts Governor in 1812 redrew voting districts in a way that caused the Boston-area district to resemble a salamander.²³⁶ Or, as one local newspaper dubbed it, a Gerry-mander.²³⁷ Gerrymandering has existed since this nation’s infancy, and politicians have used it nearly as long to deny African American communities represen-

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The term “gerrymander” stems from this Gilbert Stuart cartoon of a Massachusetts electoral district twisted beyond all reason. Stuart thought the shape of the district resembled a salamander, but his friend who showed him the original map called it a “Gerry-mander” after Massachusetts Governor Elbridge Gerry, who approved rearranging district lines for political advantage. (1812)

tation in government. After the end of Reconstruction, white government officials drew gerrymandered districts to purge African American politicians from state legislatures all across the south.²³⁸

For example, although African Americans made up a majority of South Carolina's population in the 1870s and 1880s, white government officials redrew the state's electoral map to pack nearly all of the state's African American neighborhoods into one of the state's seven districts that had a African American majority, and it included nearly all of the state's African American neighborhoods in the awkward shape of a snake.²³⁹

Drawing the map this way had the effect of ensuring that only one of the state's seven legislators were African American, despite African Americans making up more than 60 percent of the state's total population. White government officials drew similarly gerrymandered congressional districts across the south, including in North Carolina, Alabama, and Mississippi.²⁴⁰ The Mississippi government drew the African American electoral district in the shape of what one newspaper called a "shoestring."²⁴¹

Gerrymandering continued in the 20th century. After World War II, a thriving African American community began organizing politically in Tuskegee, Alabama.²⁴² But white segregationists responded by proposing a bill to redraw the boundary lines of Tuskegee to exclude all neighborhoods with African American residents and exclude African American voters from having any input into the city's elections.²⁴³ African American residents fought back, bringing a case that reached the Supreme Court in 1960, where the Court struck down the racially gerrymandered map as a violation of the Fifteenth Amendment.²⁴⁴ A few years later, Congress enacted the Voting Rights Act in 1965, which prohibits states from diluting the voting strength of African Americans, including through redistricting plans that dilute the voting strength of African American communities.²⁴⁵

Gerrymandering has existed since this nation's infancy, and politicians have used it nearly as long to deny Black communities representation in government.

Despite prohibitions by both Congress and the Supreme Court, states continued to try and find ways to gerrymander state maps to limit African American representation. In the 1980s, Georgia State Representative Joe Mack Wilson declared, "I don't want to draw nigger districts."²⁴⁶ A little more than a decade later, the Supreme Court would strike down North Carolina's efforts to gerrymander on the basis of race, stating it was "unsettling how closely the North Carolina plan resembles the most egregious racial gerrymanders of the past."²⁴⁷ Meanwhile, states continue to engage in two

other forms of legally sanctioned racial gerrymandering: partisan gerrymandering and prison gerrymandering.

Political, or partisan, gerrymandering refers to the process of drawing districts to benefit one political party over another.²⁴⁸ As of September 2021, 38 states allow partisan actors—state legislatures or their appointees—to redraw their districts.²⁴⁹ While those who engage in partisan gerrymandering claim not to directly target African American voters, the fact that most African American voters register to vote as Democrats, today, means that partisan gerrymandering often affects African American representation as well.

Though African Americans had historically supported the Republican party through post-Reconstruction due to the party's role in Emancipation and Reconstruction, the Republican party's apathy and mistreatment toward African Americans during the Hoover Administration opened the door to their entry into the Democratic party during the New Deal, as northern Democrats like President Franklin Roosevelt promised economic aid amidst the Great Depression.²⁵⁰

African American support for the Democratic party then surged in the 1960s, when Democratic President Lyndon B. Johnson ushered in the Civil Rights Act of 1964 and the Voting Rights Act of 1965.²⁵¹ President Johnson's embrace of civil rights legislation caused many of the southern white supremacists in the Democratic party to defect to the Republican party, cementing African American support for Democrats to this day.²⁵² From 1994 to 2019, over 80 percent of African American registered voters have leaned toward or identified as Democrats.²⁵³

Because most African American voters today register to vote as Democrats, partisan gerrymandering harms African American representation. In the last decade, more than two dozen African American officials have had their districts redrawn in ways that could cost them their seats, leading the

former chair of the Congressional Black Caucus to declare partisan gerrymandering a "five-alarm fire" for African American representation.²⁵⁴

Moreover, unlike earlier forms of racial gerrymandering, neither Congress nor the U.S. Supreme Court have prohibited partisan gerrymandering.²⁵⁵ As scholars and advocates have observed, the Supreme Court's refusal to strike down political gerrymandering permits legislators to get away with racial gerrymandering in places where race and party are highly correlated, simply by claiming

that they made their redistricting decisions for partisan reasons, rather than racial ones.²⁵⁶

Prison gerrymandering refers to the practice of counting incarcerated people as part of the population in the region imprisoning them, rather than the location of their actual community.²⁵⁷ Because the government allocates greater numbers of political representatives and resources to places with greater populations, prison gerrymandering benefits districts that engage in mass incarceration, skewing resources and representation to areas with prisons at the expense of the communities to which those imprisoned people belong.²⁵⁸

This process particularly affects African Americans, who are disproportionately imprisoned. In 2019, African Americans made up about 33 percent of the United States's imprisoned population,²⁵⁹ despite representing about 14 percent of the total population.²⁶⁰ Given the effects of prison gerrymandering, advocates describe it as akin to or worse than the Constitution's Three-Fifths Clause, which counted enslaved people in the Census for the purpose of allowing states to amass more pro-slavery representatives, despite the fact that enslaved people were not allowed to vote and had no basic legal rights.²⁶¹

The Myth of Voter Fraud and Voter ID Laws

Claims of voter fraud have also been used to justify laws that suppress African American voting—most prominently, voter identification (ID) laws. While voter fraud has long been invoked throughout American history to justify restrictions on voting, such claims have made a recent resurgence, including in the 2020 election, despite the lack of any evidence to support allegations of widespread fraud.²⁶² In recent years, states have used this claim to enact a number of strict ID laws that disproportionately impact African American and other nonwhite voters, hindering their ability to vote.²⁶³

States and politicians have invoked the specter of voter fraud since at least the late 1800s to justify the various rules they imposed disenfranchising African American and other nonwhite communities.²⁶⁴ The Ku Klux Klan and other white supremacists claimed voter fraud to justify the violence they inflicted upon African Americans. One southern historian claimed in 1901 that “the white man of the lately dominant class in the South... saw his former slaves repeating at elections,” and quoted with favor a white supremacist leader and his announcement

that he and his militants had violently suppressed African American voters such that “[f]ew negroes voted that day; none twice.”²⁶⁵ Thus, white supremacists have long used accusations of voter fraud as an excuse to justify the suppression of African American political participation.²⁶⁶

More recently, the idea of voter fraud and voter identification laws became popular following the 2000 election.²⁶⁷ The U.S. Attorney General at the time, John Ashcroft,

Because most Black voters today register to vote as Democrats, partisan gerrymandering harms Black representation. In the last decade, more than two dozen Black officials have had their districts redrawn in ways that could cost them their seats, leading the former chair of the Congressional Black Caucus to declare partisan gerrymandering a “five-alarm fire” for Black representation.

pushed the U.S. Department of Justice to prioritize voter fraud as an issue,²⁶⁸ even though the U.S. Department of Justice itself found only a 0.00000132 percent rate of voter fraud.²⁶⁹

Congress enacted the Help America Vote Act in 2002, which required voter identification to register to vote and deferred to states' requirements for voter identification.²⁷⁰ Many civil rights organizations opposed the bill for its discriminatory impact, arguing that the requirement would mirror a poll tax.²⁷¹ In 2005, Georgia and Indiana became the first states to enact photo identification voting laws, opening the floodgates for similar laws throughout the country.²⁷² In 2000, only 11 states required all voters to show some form of identification; this increased to 18 states in 2008,²⁷³ and, as of 2021, 35 states have laws requesting or requiring voters to show identification at the polls.²⁷⁴

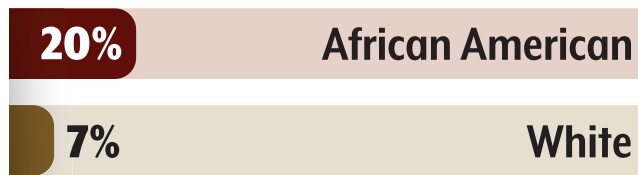
Although voter identification laws may appear race neutral, they disproportionately burden African American voters due to disparities in both access and enforcement. According to one nationwide study, 20 percent of African Americans did not possess a valid photo ID, compared to seven percent of whites.²⁷⁵ Due to segregation and unequal access, many elderly African American voters were not born in hospitals, resulting in many never being issued a birth certificate—and this fact, in turn, limits their ability to obtain other forms of photo identification.²⁷⁶

Additionally, states disproportionately enforce voter ID laws against African American voters. National studies have found that 70 percent of all African American

voters were asked to show photo identification at the polls during the 2008 election, as opposed to only 51 percent of white voters.²⁷⁷ These disparities in enforcement forced African American voters to file provisional ballots at four times the rate of white voters.²⁷⁸ Provisional ballots, in turn, are more likely to go uncounted.²⁷⁹ In 2016, nearly 700,000, or 28.5 percent of all provisional ballots went uncounted; in 2018, nearly 790,000, or 42.6 percent of all provisional ballots were not counted.²⁸⁰

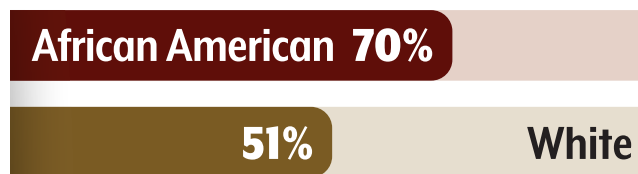
VOTER IDENTIFICATION BY RACE

Percent of voters who do not have a valid photo ID



Additionally, citizens with ready access to voter identification might underestimate the burdens that voter ID requirements impose. But as the American Civil Liberties Union has calculated, for those who need to procure a voter ID, the combined cost of time, travel, and documentation ranges from \$75 to \$175,²⁸¹ a steep cost to consider when poll taxes “of as little as \$1.50 have been deemed an unconstitutional burden on the right to vote.”²⁸² Even obtaining “free” identification cards may require a person to not only purchase a birth certificate,²⁸³ but to travel to a DMV, which in some regions could be as far as 250 miles away.²⁸⁴

2008 ELECTION REQUEST FOR PHOTO IDENTIFICATION BY RACE



In many cases, states intentionally use voter ID laws to discriminate against African American voters and people with lower incomes, perpetuating America’s legacy of creating barriers to African American voting.²⁸⁵ For example, when crafting North Carolina’s voter identification laws, one state representative expressly asked a university official to provide information “about the number of Student ID cards that are created and the [percent] of those who are African American,” and a federal appeals court characterized these restrictions as targeting African American voters with “almost surgical precision.”²⁸⁶

As one scholar points out, it is no coincidence that the states with the most rigid voter identification laws also happen to be states with substantial African American populations and a history of post-Reconstruction-style discrimination at the polls.²⁸⁷ Multiple Republican strategists have admitted that voter ID laws have nothing to do with voter fraud, and are instead part of a strategy of ensuring that Democrats cannot vote.²⁸⁸ Because African American voters identify overwhelmingly with the Democratic Party,²⁸⁹ political strategists openly seeking to disenfranchise Democrats will necessarily target African American voters.²⁹⁰ Ultimately, scholars have found that strict voter ID laws substantially decrease voting turnout for African American and Latino voters, doubling the voting gap between white and African American voters.²⁹¹

Exclusion from Juries

In addition to barring African Americans from voting, post-Reconstruction states in both the North and South also excluded African Americans from serving on juries. The Sixth Amendment to the United States Constitution guarantees criminal trials by an “impartial jury.”²⁹² Juries serve the essential role of balancing government power by giving citizens the authority to determine a just outcome in a case of law.²⁹³

In the 1800s, many states, such as Tennessee and West Virginia, expressly allowed only white men to serve on juries.²⁹⁴ While many states in the North did not have laws excluding African American jurors, one historian observed that “[i]n most of the North, custom and prejudice... combined to exclude Negroes from jury service.”²⁹⁵ During Reconstruction, Congress partially undid these restrictions with the Civil Rights Act of 1875, which prohibited states from expressly discriminating based on race in the selection of juries in state court.²⁹⁶

However, the Act did not address the many other methods that states used to exclude African American jurors.²⁹⁷ For example, states ordinarily required a jury decision to be unanimous to determine whether someone is guilty or innocent of a crime.²⁹⁸ But this meant that the presence of a single African American juror could prevent a white jury from convicting an African American defendant. To get around this, states like Louisiana and Oregon passed laws allowing a jury to convict a defendant if only 10 of the 12 jurors voted to convict.²⁹⁹

As the U.S. Supreme Court observed in *Ramos v. Louisiana* (2020), states like Louisiana and Oregon removed jury unanimity requirements after Reconstruction “to ensure that African-American juror service would be meaningless,” since one or two African American jurors could not outvote a white majority.³⁰⁰ In many states, only registered

voters can serve on juries, so because these states denied African Americans the ability to register to vote, they denied them access to the jury box as well.³⁰¹ Finally, many states excluded African American jurors through various state rules that allowed judges, court officials, and local prosecutors to prevent a person from serving on a jury without giving a reason.³⁰² As discussed in Chapter 11, An Unjust Legal system, these methods produced deep disparities in the number of African Americans convicted of crimes, including wrongful convictions.³⁰³

California

Though California amended its constitution in 1879 to allow nonwhite men to vote, the state adopted many laws similar to those adopted by northern and southern states to suppress the political participation of African Americans.³⁰⁴ California added a poll tax into its constitution in 1879, requiring payment of an average half-day's wage before someone could vote.³⁰⁵ The poll tax continued until repealed in 1914.³⁰⁶ In 1894, California added a literacy test for voting to its constitution to prevent Chinese residents from voting.³⁰⁷ Unsurprisingly, anti-Chinese and anti-Black racism in California frequently intertwined. The California state Democratic party, for instance, pledged in 1867 to establish “no Negro or Chinese suffrage,”³⁰⁸ and its racist pledge enabled Democrats to sweep state elections that year.³⁰⁹

In the years after World War II, the African American population in California rose dramatically.³¹⁰ With a growing presence in the state, African American communities in California continued pushing for greater political representation. But they faced resistance and retaliation along the way. California, like the federal government, frequently treated African American activism as a threat.³¹¹ In 1966, when civil rights protesters used the slogan of “Black power” to advocate for racial equality, the Republican Candidate for Lieutenant Governor, Robert Finch, declared that “it’s wrong, if... any minority, including the Negro people, think they can blackmail or black-jack their way into acceptance into our society, they’re just dead wrong, and the American people will not tolerate this kind of thing.”³¹²

That same year, Huey P. Newton and Bobby Seale formed the Black Panther Party in Oakland, California, seeking African American economic empowerment and the end of police brutality.³¹³ To pursue these goals, the Panthers adopted a number of community service programs,

including health care clinics, a free breakfast program for school children,³¹⁴ and police observation patrols.³¹⁵

As with Dr. Martin Luther King, Jr., the federal government and California viewed the Black Panthers as a threat.³¹⁶ Vice President Spiro Agnew labeled the Black Panthers an “anarchistic group of criminals.”³¹⁷ Federal Bureau of Investigation Director Hoover declared that the Black Panther Party “without question, represents the greatest threat to the internal security of the country.”³¹⁸ Through its counterintelligence program (COINTELPRO), the FBI surveilled and sabotaged the Black Panthers.³¹⁹ The FBI sent anonymous, inflammatory letters to restaurants, grocery stores, and churches to dissuade them from providing food or facilities for the free breakfast program.³²⁰

To suppress the Black Panthers’ newsletter activities, the FBI ordered the Internal Revenue Service to audit the organization and any income they received from distributing newsletters.³²¹ Further, the FBI infiltrated the group with undercover agents and spread misinformation, paranoia, conflict, and distrust within the party.³²² Californian law enforcement also repeatedly arrested Black Panther members on harassment and public disorder charges, disrupting the organization and sapping resources away from its community service initiatives.³²³ These efforts contributed to the organization’s collapse in 1982.³²⁴

Like many states in the North and South, California also stripped individuals of their right to vote when they were convicted of a felony, embedding such a provision in its constitution since 1849.³²⁵ It took 125 years before California eventually changed this wholesale denial of voting rights in 1974, amending its constitution to allow individuals convicted of felonies to vote if they had com-

Californian law enforcement also repeatedly arrested Black Panther members on harassment and public disorder charges, disrupting the organization and sapping resources away from its community service initiatives. These efforts contributed to the organization’s collapse in 1982.

pleted their sentence and parole.³²⁶ In 2016, the state legislature restored voting rights to people convicted of a felony offense housed in jail, but not in prison.³²⁷

Still, in 2020, approximately 243,000 Californians were barred from voting due to felony convictions.³²⁸ Of that number, 50,000 (or about 20 percent) are African

American.³²⁹ Only recently, in 2020, did California voters approve Proposition 17, which amended the state's constitution to restore the right to vote to all

individuals who have completed their prison term, even if they are still on parole.³³⁰

V. Voting Rights Legislation

As African American Activists Fought for Civil Rights, White Americans Reacted with Violence

After the end of Reconstruction, African Americans, facing increased threats to their liberty, organized and mobilized to assert their equal rights. Groups like the National Association for the Advancement of Colored People (NAACP) used protest and litigation to advance the civil rights of African Americans and secure the rights guaranteed by the Fourteenth and Fifteenth Amendments.³³¹ Much of the NAACP's legal work focused on defending African Americans from wrongful convictions and bringing lawsuits to hold white perpetrators of racial terror accountable for their crimes.³³² The NAACP also brought legal challenges to end many of the devices states used to suppress African American political power, such as the all-white primary.³³³

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A civil rights marcher suffering from exposure to tear gas, holds an unconscious Amelia Boynton Robinson after mounted police officers attacked marchers in Selma, Alabama as they were beginning a 50 mile march to Montgomery to protest race discrimination in voter registration. (1965)

In these efforts, NAACP lawyers played a critical role in using litigation to end racial segregation, most famously through *Brown v. Board of Education*, where the NAACP convinced the U.S. Supreme Court to strike down racial segregation in public schools as unconstitutional.³³⁴ In addition to its litigation, the organization lobbied the federal government to enact civil rights legislation, including anti-lynching laws, voting rights laws, and other civil rights laws that would ensure the equal protection of African Americans.³³⁵

African American women, too, played a critical role in early African American activism. During the 1896 election in North Carolina, for instance, Sarah Dudley Pettey canvassed the African American sections of Raleigh to urge African American women to persuade their husbands, brothers, and sons to vote.³³⁶ In 1898, the “Organization of Colored Ladies” in Wilmington declared that for “Every Negro who refuses to register his name... that he may vote, we shall make it our business to deal with him in a way that will not be pleasant. He shall be branded a white-livered coward who would sell his liberty.”³³⁷

When the United States ratified the Nineteenth Amendment in 1920, African American women registered in large numbers to vote.³³⁸ For instance, in Kent County, Delaware, one local paper reported “unusually large” numbers of African American women who showed up to vote, though officials would prevent many of them—and many others across the country—from voting.³³⁹

World War II contributed to a surge in African American civil rights activism.³⁴⁰ The service and sacrifice of African Americans—both abroad in the military and at home in factories and fields—underscored the moral imperative for equal treatment, especially given America's war against the Nazism and white supremacy abroad.³⁴¹

With renewed energy, African American organizations pushed to secure voting rights, continuing efforts to organize, educate, and register African American voters, despite the threats of violence and the other barriers that states had created after Reconstruction.³⁴² African American women like Ella Baker led and directed civil rights campaigns and voter registration drives for some of the nation's largest civil rights groups, including the NAACP, Southern Leadership Conference, and Student

Nonviolent Coordinating Committee.³⁴³ In addition, interracial labor unions in the South played a part in registering African American voters.³⁴⁴ In 1947, Local 22 of the Food and Tobacco Workers in Winston-Salem, North Carolina helped register 3,000 African American residents in the city, helping elect the first African American alderman to the city's board since Reconstruction.³⁴⁵

But African American veterans demanding equal treatment returned home to fierce resistance.³⁴⁶ In Decatur, Mississippi, a white senator, Senator Theodore Bilbo, warned African American residents to stay away from the polls for the Democratic primary in 1946, calling for “every red-blooded white man to use any means to keep the niggers away from the polls.”³⁴⁷

A mob of white people waving pistols turned five returning World War II veterans away from voting during that primary.³⁴⁸ A group of civil rights organizations complained to the U.S. Senate about Senator Bilbo's intimidation tactics, prompting a Senate committee to hold four days of hearings in Jackson, Mississippi.³⁴⁹ Two hundred African Americans, most of them veterans, packed the federal courtroom in Jackson to share their experience of violence and voter suppression.³⁵⁰

African Americans faced similar threats in other places. In March 1948, the Ku Klux Klan paraded around Wrightsville, Georgia, warning that “blood would flow” if African Americans tried to vote in the forthcoming election.³⁵¹ Seven months later, two whites threatened Isaac Nixon, an African American veteran, telling him not to vote.³⁵² He refused to heed their warning, cast his ballot shortly after sunrise, and by nightfall he had been murdered.³⁵³ Though Nixon's murderers later stood trial, an all-white jury acquitted them.³⁵⁴

In Florida, on the Christmas Eve of 1951, the KKK bombed the home of the state's NAACP director, murdering Harry T. Moore and his wife.³⁵⁵ During the 1963 civil rights protests in Birmingham, Alabama, white policemen and firefighters unleashed hounds and blasted protestors with high pressure water hoses that stripped the clothes off their backs.³⁵⁶

In Greenwood, Mississippi, white citizens and officials responded to African American voter registration efforts by cutting off food supply to African American communities, imprisoning African American people for “breach of peace,” setting fire to African American businesses, and firing gunshots at African American activists in their cars, their offices, and their homes.³⁵⁷ When African

American activists organized the Freedom Vote and the Freedom Summer of 1964 in Mississippi,³⁵⁸ local sheriffs arrested three activists and turned them over to KKK members, who proceeded to murder the activists, burn their car, and bury their remains.³⁵⁹

On March 7, 1965, future Congressman John Lewis led some 600 protestors on a march from Selma to Montgomery, Alabama.³⁶⁰ That “Bloody Sunday,” Alabama state troopers attacked.³⁶¹ Awaiting the protestors on the Edmund Pettus Bridge, state troopers rushed into the crowd with nightsticks.³⁶² Troopers beat and bloodied

When Black activists organized the Freedom Vote and the Freedom Summer of 1964 in Mississippi, local sheriffs arrested three activists and turned them over to KKK members, who proceeded to murder the activists, burn their car, and bury their remains.

protestors, knocking many unconscious.³⁶³ Troopers fractured Lewis's skull in the assault.³⁶⁴ “I thought I was going to die on that bridge,” he later recalled.³⁶⁵ The bloodshed at Selma prompted outrage across the nation, becoming the tipping point that spurred the federal government to enact the Voting Rights Act that year.³⁶⁶

The Voting Rights Act of 1965

The centuries-long African American struggle for freedom led to the passage of the Voting Rights Act, a landmark law that prohibited many of the barriers described in this chapter, allowing millions of African Americans to vote.³⁶⁷ In 1964, prior to the protections of the Voting Rights Act, 57 percent of eligible African Americans remained unregistered to vote.³⁶⁸ The passage of the Voting Rights Act resulted in a 21 percent increase in African American voter registration—the largest gains were recorded in the south, where the percentage of registered African American voters increased from below 31 percent to over 66 percent by 1984.³⁶⁹

The Voting Rights Act empowered the United States Department of Justice to enforce voting rights, authorized individual voters to sue in federal court to enforce their voting rights, and authorized the federal government to send examiners to register voters.³⁷⁰ Among the Act's most important provisions:

- Section 2 of the Voting Rights Act prohibits any voting restriction that “results in” the denial of the right to

vote based on race, regardless of whether a state intended to discriminate;³⁷¹

- Section 4 of the law identified certain state and local governments that had a history of discrimination against African Americans. State and local entities that demonstrated such past discrimination were “covered jurisdictions” subject to greater oversight from the federal government;³⁷² and
- Section 5 provided that “covered jurisdictions” were required to obtain approval—or “preclearance”—from the Department of Justice or a federal court in Washington, D.C. before passing any voting rights related law. The covered jurisdiction had to demonstrate that the proposed voting change did not have a discriminatory purpose or a discriminatory effect on African American or other nonwhite voters.³⁷³

Altogether, these provisions represented what the United States Department of Justice called “the most successful piece of civil rights legislation ever adopted by the United States Congress,” due to its role in eliminating many of the devices that had been used to deny Americans their right to vote.³⁷⁴

Within the last decade, however, the United States Supreme Court has removed or weakened key pillars of the Voting Rights Act.³⁷⁵ In *Shelby County v. Holder* (2013), the Supreme Court struck down section 4 of the Act as unconstitutional.³⁷⁶ And because section 5’s preclearance requirements only applied to areas identified through Section 4, the Supreme Court effectively eliminated Section 5 as well. Though admitting that “voting discrimination still exists,” the Court felt that enough had been done because 40 years had passed and minority voting rates had improved.³⁷⁷

Thus, the Court found Section 4 to no longer be necessary, despite Congress’s renewal of Section 4 in 2006 by an overwhelming majority (the House voted 390 in favor to 33 opposed; the Senate passed it unanimously), and despite Congress’s finding that “40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment[.]”³⁷⁸ The Court’s decision prompted Justice Ruth Bader Ginsburg to protest in dissent that striking down this provision of the Voting Rights Act “when it has worked and is continuing to work” is “like throwing away your umbrella in a rainstorm because you are not getting wet.”³⁷⁹

Eight years later, the Court weakened Section 2 of the Voting Rights Act as well.³⁸⁰ Though Section 2 prohibits any voting law that “results in” the denial of voting rights based on race, the Court, in *Brnovich v. Democratic National Committee*, rewrote the law to limit its reach.³⁸¹ While Section 2 speaks only to voters’ rights, and the need to protect them against racial discrimination, the Supreme Court created a new requirement for courts to consider the “strength of the state interests.”³⁸² By inserting the state’s goals into the equation, the Supreme Court flipped the Voting Rights Act from a civil rights act into a balancing act, allowing voting rights to be sacrificed if a court believed the state’s goals to be worthy enough.³⁸³

The Court also declared that the legality of a voting restriction should be evaluated partly based on whether the law “has a long pedigree” or was in “widespread use” as of 1982, the year Congress amended the Voting Rights Act to prohibit laws that “result in” racially discriminatory denials of the right to vote.³⁸⁴ But, as detailed in this chapter, many racially discriminatory voting restrictions have had a long and widespread pedigree in this nation’s history. Poll taxes and literacy tests existed for almost 100 years—some restrictions even longer.³⁸⁵ By considering a voting restriction’s use in the past as a basis for accepting it, the Supreme Court’s decision enables discriminatory restrictions to remain in place, simply because they had been used previously.

The Supreme Court’s elimination or weakening of the anti-discrimination protections in Sections 2, 4, and 5 of the Voting Rights Act has opened the floodgates for laws restricting voter access across the nation. Hours after the *Shelby County v. Holder* decision, Texas implemented a strict photo ID law that had previously been rejected under Section 5.³⁸⁶

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That summer, the North Carolina legislature also passed a sweeping law that instituted a stringent photo ID requirement, eliminated same-day voting registration, and cut back on early voting.³⁸⁷ Over the four years following *Shelby County*, jurisdictions previously covered under Section 5 closed 1,173 polling places, many in districts with majority Latino and African American voters.³⁸⁸ States also limited voting hours, limited the ability to vote via mail-in ballots, and purged voter registration rolls.³⁸⁹

While these restrictions limited voting access for all Americans, they also targeted or specially affected African Americans. The removal of polling places in Ohio ensured that “African Americans in Ohio wait[] in line for fifty-two minutes to vote, while whites wait[] only eighteen minutes.”³⁹⁰ After record turnout of African American voters in Georgia helped flip federal elections in favor of Democrats in 2020, Georgia’s Republican state legislature passed a law limiting drop boxes for mail ballots, introducing more rigid voter identification requirements for absentee ballots, and criminalizing the act of providing food or water to people waiting in line to vote.³⁹¹ In a recent lawsuit filed in federal court, the U.S. Department of Justice asserts that Georgia enacted these restrictions specifically to target African American voters.³⁹²

As one Virginia Senator explained, these restrictions were meant “to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without impairing the numerical strength of the white electorate.”

Overall, states across the country introduced 389 restrictive voting laws from January to May 2021, alone.³⁹³ With the Supreme Court’s recent limitations of the Voting Rights Act, laws like Georgia’s are becoming the new norm across the country.³⁹⁴

California

In the latter half of the 20th century, California began taking steps to expand voting access. California encouraged county and volunteer voting registration efforts

in the 1950s and 1960s, and it amended its constitution to eliminate its literacy test in 1970.³⁹⁵ In the 1970s, California relaxed its rules for requesting absentee ballots and for remaining on the voter registries from year to year.³⁹⁶ More recently, the state enacted the California Voting Rights Act in 2001, which permits citizens to file suit in state court to challenge racially discriminatory restrictions in at-large elections without having to demonstrate the higher evidentiary standards required under the federal Voting Rights Act.³⁹⁷

Despite the state’s efforts to advance voting access, the federal government has observed that California and some of its cities and counties have continued to engage in voting discrimination throughout the late 20th century. The U.S. Attorney General determined that California’s use of a statewide literacy test to restrict voting during the November 1968 election violated the federal Voting Rights Act.³⁹⁸

From 1968 to 1976, the United States Department of Justice also identified Kings County, Monterey County, and Yuba County as engaging in discriminatory practices, monitoring these counties and objecting to various new voting restrictions proposed by these counties well into the 2000s.³⁹⁹ As another example, the United States Department of Justice objected to Merced County’s re-districting plan in 1992, a plan opposed by both African American and Latino communities because it would have denied them the opportunity to elect their preferred candidate.⁴⁰⁰ Thus, while California has enacted laws expanding voting rights, equal access to the ballot box continues to be an ongoing challenge in parts of the state.

VI. Effects of Restrictions on African American Political Participation

Before the Voting Rights Act of 1965

When adopting the numerous voting restrictions described in this chapter, states made their intent clear. As one Virginia Senator explained, these restrictions were meant “to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without impairing the numerical strength of the white electorate.”⁴⁰¹

These methods proved effective. Once Louisiana adopted a number of these restrictive rules in its 1898 constitution, the number of African American voters in Louisiana plummeted from 130,000 to 5,000.⁴⁰² In Virginia, the number dropped from 147,000 to 21,000.⁴⁰³ Mississippi’s constitutional convention cut African American voter enrollment from about 147,000 to around 8,600.⁴⁰⁴

In 1906, five years after Alabama designed its exclusionary rules, only two percent of African American voters

remained on the state's voter registries.⁴⁰⁵ With the suppression of African American votes, African American representation in Congress quickly dwindled. During Reconstruction, 16 African American men held seats in Congress.⁴⁰⁶ From 1887 to 1901, just five members of Congress—in either the House of Representatives and Senate—were African American.⁴⁰⁷ From 1901 to 1929, not a single African American served in Congress.⁴⁰⁸ No African American congressman would be elected again from the South until the 1970s.⁴⁰⁹

These barriers prevented African Americans from governing, while securing the power of southern white supremacists in Congress, who voted down civil rights legislation and embedded racism into federal laws that built modern America. Near the end of Reconstruction in the 1870s, white southerners formed the “Southern Bloc” in the Senate—a unified front of white Democratic Senators from the former confederate states.⁴¹⁰ After the passage of the Fifteenth Amendment in 1870, progressive senators proposed hundreds of pieces of civil rights legislation to remedy discrimination against African Americans in education, employment, housing, transportation, public accommodations, and voting.⁴¹¹ But for 87 years, every attempt but one died in Congress, many blocked by the white “Southern Bloc” of the Senate, who vigilantly thwarted any effort to advance African American civil rights.⁴¹²

SOUTHERN VOTING RESTRICTION LAWS DECLINE OF BLACK VOTERS ONCE PASSED BY STATE



Not only did white southern lawmakers vote down civil rights legislation, they also rewrote watershed pieces of legislation to exclude African Americans. Many historians and economists consider the New Deal responsible for creating the modern middle class and many of the programs that Americans depend upon today, such as Social Security.⁴¹³ But the New Deal excluded African Americans from many of its benefits.⁴¹⁴ At the time, 90 percent of the southern Black workforce, and 60 percent of nation's total Black workforce, worked as farm laborers or domestic servants.⁴¹⁵

During the legislative process to pass various parts of the New Deal, southerners on the Senate Finance Committee

excluded farm laborers and domestic servants from programs providing Social Security, minimum wage, unemployment insurance, and workers' compensation.⁴¹⁶ As several historians explain, the exclusion of farm laborers and domestic servants was “racially coded . . . Southern politicians, reported one architect of the new law, were determined to block any ‘entering wedge’ for federal interference with the handling of the Negro question.”⁴¹⁷ Thus, southern politicians rewrote the New Deal to exclude African Americans from its benefits, fearing that federal benefits would discourage African American workers from taking low-paying jobs in their fields, factories, and kitchens.⁴¹⁸

In one of the final parts of the New Deal, the government spent \$95 billion in the Servicemen's Readjustment Act of 1944 (GI Bill) to give millions of veterans returning from World War II the ability to attend college, receive job training, start businesses, and purchase homes.⁴¹⁹ Yet, one report from the 1940s observed that it was “as though the GI Bill had been earmarked ‘For White Veterans Only.’”⁴²⁰

During drafting, the chair of the House Veterans Committee, a white supremacist Congressman from Mississippi, ensured that the GI Bill was administered by states instead of the federal government to guarantee that states could direct its funds solely to white veterans.⁴²¹ Similar results arose in housing and health care. For both the Hill Burton Act, which underwrote the creation of a modern health care infrastructure,⁴²² and the Housing Act of 1949, Congress included segregation clauses or rejected anti-discrimination clauses to avoid southern lawmakers' opposition, which otherwise would have doomed the legislation.⁴²³

Thus, by barring African American political participation after Reconstruction, white supremacists seized state, local, and federal power, perpetuated discriminatory policies, blocked efforts to redress discrimination, and excluded African Americans from most of the major economic legislation that produced the modern economy of the United States.⁴²⁴

After the Voting Rights Act

Since the passage of the Voting Rights Act, African American voters have been among the most stable voting blocs, despite historic and ongoing efforts to restrict their ability to vote.⁴²⁵ African American support has proved critical, in particular, in modern elections. In the last three presidential elections, African American voter turnout was 67 percent in 2012, 60 percent in 2016, and 63 percent in 2020.⁴²⁶ African American voter turnout in each of these elections was higher than Latino and Asian Americans, and higher than whites in 2012.⁴²⁷

Though African Americans represent about 12.4 percent of the U.S. population today,⁴²⁸ many political pundits recognized that the African American electorate played a significant role in determining the outcome in the presidential election in 2020.⁴²⁹

Nevertheless, these longstanding limitations on African American political participation have deeply shaped the lives of African Americans. If the goal of political participation is to ensure a government is responsive to the needs of its citizens, African American political participation is particularly important to serve the needs of African American communities who experience the persisting effects of slavery and segregation. But the suppression of African American political participation has prevented African Americans from exercising their democratic voice, perpetuating policies that entrench racial inequalities.

When African Americans gain greater representation, African Americans have a greater ability to request and enact policies that meet their economic and educational needs. One recent study—the first to examine the effects of African American politicians on public finances during Reconstruction—found that Reconstruction-era communities with more Black politicians had higher local tax revenue, as well as higher Black literacy rates.⁴³⁰ In other words, the study suggests that communities with more African American politicians increased their tax revenue, which in turn increased investment in local education and African American education.

Another study found that the passage of the Voting Rights Act led to some reduction in racial wealth disparities, especially in covered jurisdictions subject to greater federal oversight.⁴³¹ Comparing neighboring counties—where one county was a covered jurisdiction subject to heightened oversight under the Voting Rights Act and the other was not—the study found that the Voting Rights Act narrowed the Black-white wage gap 5.5 percent between 1965 and 1970, a change driven primarily by increases in African American wages.⁴³²

By protecting African American voting rights, the Act helped drive increases in wages by giving African Americans greater voice to seek public employment opportunities and enabling African Americans to ask for public funds to be invested in their communities.⁴³³ The Act also allowed African American communities and their representatives to implement affirmative action and anti-discrimination laws to protect African Americans and their ability to access equal employment

opportunities and equal wages.⁴³⁴ According to the study, the Voting Rights Act contributed to about one-fifth of the overall decline in the wage gap between African American and white Americans in the South between 1965 and 1970.⁴³⁵

Yet, African Americans can secure the benefits of political participation only to the extent that government policies respond to their voices. Despite modern gains in political participation and representation—including Barack Obama, the first African American man to be

Studies show that Black support for a policy actually decreases the chances that the government will enact it. Scholars have found evidence that members of Congress are less responsive to their Black voters than to their white voters.

elected President in 2008, and Kamala Harris, the first African American woman to be elected Vice President in 2020—African Americans have not seen a similar rise in policies responsive to their needs.⁴³⁶

Studies examining more recent years have shown that not only do African Americans hold less political sway than white Americans when it comes to influencing the government, African American support for a policy actually decreases the chances that the government will enact it.⁴³⁷ Scholars have found evidence that members of Congress are less responsive to their African American voters than to their white voters.⁴³⁸

Recent events underscore the government's failures to heed African American voices. For example, despite national and bipartisan support for police reform following the murder of George Floyd, Congress failed to enact any police reform legislation.⁴³⁹ Similarly, Congress failed to pass any voting rights legislation—including bills with bipartisan support—to counteract the slew of state laws increasing voting restrictions after the 2020 election.⁴⁴⁰

Likewise, Congress has consistently failed to pass legislation redressing the economic disparities faced by African Americans. African American households, on average, still earn one-tenth that of white households.⁴⁴¹ Chapter 13, *The Wealth Gap* delves into the wealth gap between African American and white families and its causes. Many of these problems can be traced to the discriminatory laws and policies that continue to be felt today. Take, for example, housing segregation. Laws that historically enforced or sanctioned racial housing segregation have produced neighborhood segregation

that persists today.⁴⁴² Because modern life revolves around a family's neighborhood—including access to employment, credit scores, housing values, the amount of funding for local schools or parks, and policing—the racist policies that produced neighborhood segregation have created a discriminatory foundation upon which other laws have been built.⁴⁴³

Although increased political representation can allow African American communities to try to change these systems, undoing these discriminatory systems is not a matter of flipping a switch. Discriminatory policies have piled over decades and centuries, and undoing these systems is much like undoing the literal concrete underlying a city and its streets and sidewalks.⁴⁴⁴ It requires many years, if not decades, of durable and long-term commitment to both change the old system and design a new one. The sustained, long-term commitment required for change means that the election of any one or several Black politicians is not enough to fix the problematic policies at the root of racial inequalities.⁴⁴⁵ Political participation therefore represents just one piece of the puzzle when it comes to identifying the ongoing legacies of slavery, systemic discrimination, and what needs to be done to redress them.

California

During California's early history, African American Californians struggled to gain representation in political office or to have a voice in party politics. Beginning in 1870, most Black Californians belonged to the Republican Party, the party that had abolished slavery.⁴⁴⁶ But the white members of California's Republican Party ignored Black Californians' requests to serve in elected or appointed

political offices.⁴⁴⁷ Some Black voters protested by joining the Democratic Party in the 1880s.⁴⁴⁸ But Democrats, too, refused Black men the offices that they had promised in order to lure Black voters to their side.⁴⁴⁹ Though Black men secured the formal right to vote in 1870, it would take nearly a half century before California's first Black legislator, Frederick M. Roberts, was elected to the California State Assembly in 1918.⁴⁵⁰ From 1918 to 1965, only six Black male Californians were elected to the California Legislature.⁴⁵¹ California did not elect its first Black female legislator, Yvonne Brathwaite Burk, until 1966.⁴⁵²

In more recent years, California has made many strides in expanding voting rights access. As of January 2022, the number of Black elected officials in California's legislature is now proportional to the state's Black population.⁴⁵³ But as described in later chapters of this report, the state still has not addressed many of the socioeconomic disparities that have resulted from these

Discriminatory policies have piled over decades and centuries, and undoing these systems is much like undoing the literal concrete underlying a city and its streets and sidewalks. It requires many years, if not decades, of durable and long-term commitment to both change the old system and design a new one.

longstanding barriers, disparities that profoundly shape the lives of Black Californians. While Black Californians may have a greater ability to vote in the ballot box today, Black Californians also have voted with their feet: many have left the state for opportunities elsewhere, reflecting continued failure to address their needs.⁴⁵⁴

VII. Conclusion

Despite the promise of American democracy, the United States has excluded African Americans from equal participation in self-government. By doing so, government officials and private parties sought to recreate the racial hierarchy that existed during enslavement. Though African Americans organized to pursue their equal citizenship, government officials resisted, retaliated, and undercut Black political power through the many means

and methods described in this chapter. Many of these methods persisted for nearly a century—others persist to this day. But all of these methods have limited the country's efforts to redress the legacy of slavery and racial discrimination, producing deep inequalities in the politics and policies that shape America and the lives of African Americans today.

Endnotes

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²⁰ *Ibid.*

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