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Finding a New Path: Using the Fifteenth Amendment to Protect the Voting Rights of Returning Citizens

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FINDING A NEW PATH: USING THE FIFTEENTH AMENDMENT TO PROTECT THE VOTING RIGHTS OF RETURNING CITIZENS

Ebony Love[*]

> "[W]e are imprisoned in a political cage—to accept matters as they are. I refuse to do so, because the political terrain as it is currently laid out has left black and other vulnerable communities throughout this country in shambles. I want to choose another path. I want to remake American democracy, because whatever this is, it ain't democracy."
>
> -Eddie S. Glaude, *Democracy in Black*[1]

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* J.D. Candidate 2021, University of Florida Levin College of Law; B.A. 2017, University of Florida. I would like to thank Professor Michelle Jacobs for challenging me to write this paper and all returning citizens who encourage me to fight daily.

1. EDDIE S. GLAUDE, DEMOCRACY IN BLACK: HOW RACE STILL ENSLAVES THE AMERICAN SOUL 227 (2016).

INTRODUCTION

The 2018 general election made history when Florida joined 46 other states in automatically restoring voting rights for returning citizens[2] convicted of felonies.[3] Amendment Four on the 2018 Florida ballot amended the language of Florida Constitution Article 6 § 4 to restore the voting rights of some felons "upon completion of all terms of [their] sentence[s] including parole or probation."[4] Individuals convicted of "murder or a felony sexual offense" would not get their voting rights automatically restored.[5]

The ballot measure in Florida had bipartisan support.[6] Organizations that supported the measure generally argued Amendment Four provided returning citizens a second chance to fully participate in society.[7] They also supported the measure because of its potential reach: Amendment Four enfranchised "more people at once than any single initiative since women's suffrage."[8] Most important, Amendment Four would help alleviate racial disparities in enfranchisement.[9] The majority of Florida's returning citizens are white.[10] However, black people were "disproportionately affected . . . [because m]ore than one in five black voters [could not] vote in Florida, compared with about one in 10 voters in the state's general population [ ]and one in 40 nationwide."[11]

By February 2019, the Florida Legislature limited the effectiveness of Amendment Four when the Senate Ethics and Elections Committee

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2. The term "returning citizens" is deliberately used in place of "felons" by the Florida Rights Restoration Coalition and by activists working on these issues. This term will be used in this work out of respect and in acknowledgment of their work. Emily Bazelon, *Will Florida's Ex-Felons Finally Regain the Right to Vote?*, N.Y. TIMES MAG. (Sept. 26, 2018), https://www.nytimes.com/2018/09/26/magazine/ex-felons-voting-rights-florida.html?action=click&module=inline&pgtype=Article [https://perma.cc/825Y-H7EK] (explaining that "returning citizens" is deliberately used in place of "felons" by the Florida Rights Restoration Coalition and by activists working on these issues).

3. Prior to the 2018 election, the four states that did not allow for the automatic restoration of voting rights to returning citizens that served their full sentence were Florida, Iowa, Kentucky, and Virginia. *See* FLA. CONST. art. 6, § 4 (1992); *see also* IOWA CONST. art 2, § 5; KY. CONST. § 145; VA. CONST. art 2, § 1.

4. FLA. CONST. art. 6, § 4(a) (amended 2018).

5. *Id.* art. 6, § 4(b).

6. *See generally* Steve Bousquet, *Koch-funded group supports voting rights for felons in Florida*, TAMPA BAY TIMES (Sept. 13, 2018), https://www.tampabay.com/florida-politics/buzz/2018/09/13/koch-funded-group-supports-voting-rights-for-felons-in-florida/ [https://perma.cc/CBB9-JLMA] (explaining how organizations from all political ideologies supported the voter restoration initiative).

7. *Id.*

8. Bazelon, *supra* note 2.

9. *Id.*

10. *Id.*

11. *Id.*

submitted Senate Bill 7066.[12] One purpose of this bill was to amend sections of the Florida statutes to define "completion of all terms of sentence."[13] This definition specified that restitution and court fines and fees must be paid to automatically restore the voting rights of an individual convicted of a felony outlined in Fla. Const. Art. VI § 4 (a).[14]

Lawmakers that supported Senate Bill 7066 cited vague constitutional concerns and state control over elections as reasons they voted to pass the bill.[15] The bill passed when lawmakers voted along party lines in May 2019.[16] Governor Ron DeSantis supported the bill throughout the legislative process and signed it into law in June 2019.[17]

Although some lawmakers who supported Senate Bill 7066 were unconcerned about who the bill would affect,[18] opponents of the bill explained throughout the legislative process it would disproportionately affect Black voters.[19] Before Amendment Four, twenty percent of eligible Black voters could not vote because of their felony convictions.[20] Amendment Four and Senate Bill 7066, taken together, brought Florida into the national spotlight in the conversation about mass incarceration and disenfranchisement.

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12. S.B. 7066, 2019 Leg., 121st Reg. Sess. (Fla. 2019).

13. *Id.*

14. *Id.*

15. *See* Janelle Ross, *Amendment 4 in Florida restored voting rights to felons. Now that's back in doubt*, NBC NEWS (Apr. 5, 2019), https://www.nbcnews.com/news/nbcblk/felon-voting-rights-back-jeopardy-florida-n991146 [https://perma.cc/88JT-QZWB] (quoting Republican Rep. Jamie Grant's confusing stance when he was asked whether he knew who would be impacted by the new bill: "I don't want to know the impact of this because it's irrelevant ... If truth and fact and intellectual honesty do not drive our discussion of things related to the Constitution, we have no hope") (alteration in original); *see also* Gary Fineout, *Florida GOP moves to rein in felon voting rights*, POLITICO (May 2, 2019), https://www.politico.com/states/florida/story/2019/05/02/florida-gop-moves-to-rein-in-felon-voting-rights-1005333 [https://perma.cc/4WBC-CV4D] (quoting Republican Sen. Rob Bradley who explained why he voted to pass the senate bill: "If they took money from you, if they broke in to your house and stole something that is valuable to you and your family and they have not paid it back, they have not completed their sentence").

16. THE FLA. SENATE, CS/SB 7066: ELECTION ADMINISTRATION, https://www.flsenate.gov/Session/Bill/2019/07066/?Tab=VoteHistory [https://perma.cc/MRM7-Y6D9] (last visited Nov. 12, 2019).

17. Steven Lemongello, *The Amendment 4 law: Questions and answers about fines, restitution and 'poll taxes' claims about the felon voting rights act*, ORLANDO SENTINEL (July 5, 2019, 12:27 PM) https://www.orlandosentinel.com/politics/os-ne-amendment-4-questions-answers-20190703-jppm5c5knrhjte4tvvym3g7g5e-story.html [https://perma.cc/VN8Q-AWP3].

18. *See* Ross, *supra* note 15 ("Grant said that he'd been asked repeatedly if he knows which Floridians would lose their right to vote due to his bill, or how many would be affected. He said, . . . 'I don't want to know the impact of this because it's irrelevant . . . .'").

19. *Id.* (explaining how opponents of Senate Bill 7066 framed their argument around the negative impact on Black voters).

20. *Id.*

Scholars in the United States have been developing a national conversation around mass incarceration and disenfranchisement.[21] These conversations draw the historical connection from the emancipation of slaves to the disenfranchisement of the Black population today.[22] Recognizing the disparity today is clear; the difficulty lies in tracking how the legal system allows for disparity in the disenfranchisement of returning citizens.

Black people are imprisoned at a disproportionately high rate for a myriad of reasons stemming from institutionalized racism in the criminal justice system.[23] The United States imprisons 1,489,363 people.[24] Thirty-three percent of the U.S. prison population is Black.[25] According to the 2010 census, thirteen percent of the U.S. population is Black.[26] This disproportionate rate of incarcerating Black people is also seen at the state level. Florida's state prison population is 98,504.[27] Forty-seven percent of the Floridian state prison population is Black,[28] while seventeen percent of Florida's population is Black.[29]

Scholars turn to the Thirteenth Amendment to discuss how mass incarceration was intentionally designed to disproportionately affect Black people.[30] Lawyers turn to the Fourteenth Amendment to discuss equal protection and due process protections in the face of racial

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21. *See generally* GLAUDE, *supra* note 1 (discussing how race, mass incarceration, and democracy intersect); *see also* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 197–201 (10th Anniversary ed. 2020) (discussing how mass incarceration impacts returning citizens' ability to vote in a historical and global context).

22. *See* IBRAM X. KENDI, STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA 223–47 (2017) (explaining how the United States transitioned through the Civil War and Reconstruction by maintaining a racial hierarchy by denying basic civil rights to Black people).

23. *See generally* ALEXANDER, *supra* note 21, at 15 (discussing how the United States has developed its current mass incarceration problem and how it disproportionately and intentionally impacts Black communities).

24. U.S. DEP'T OF JUST., NCJ 252156, PRISONERS IN 2017 at 1 (Apr. 2019), https://www.bjs.gov/content/pub/pdf/p17.pdf [https://perma.cc/83BE-XD76].

25. *See id*. at 17.

26. U.S. CENSUS BUREAU, POPULATION, CENSUS, APRIL 1, 2010 (2010), https://www.census.gov/quickfacts/fact/table/US/POP010210 [https://perma.cc/5VZG-7VYK] (including only monoracial Black or African American persons).

27. U.S. DEP'T OF JUST., *supra* note 24, at 4.

28. *Id*. at 42.

29. U.S. CENSUS BUREAU, *supra* note 26.

30. *See, e.g.*, *13th*, NETFLIX (2016), https://www.netflix.com/title/80091741 (featuring scholars who interpret the language of the 13th Amendment "[n]either slavery nor involuntary servitude, except as a punishment for crime . . . shall exist in the United States" as a legal loophole to reclassify Black people from slaves to criminals).

discrimination.[31] In these analyses, the Fifteenth Amendment to the United States Constitution is largely ignored. When Florida enacted Senate Bill 7066, it created a unique contemporary constitutional issue.

Shortly after Senate Bill 7066 was signed into law, five lawsuits representing seventeen plaintiffs were filed in the Northern District of Florida claiming the new law violated their constitutional rights.[32] Each of the five suits seek relief under federal civil rights statutes, claiming the plaintiffs' Fourteenth and Twenty-Fourth Amendment rights were violated.[33] Only one suit made the argument that the Fifteenth Amendment also rendered the bill unconstitutional.[34] The Northern District of Florida consolidated the five suits into *Jones v. DeSantis*.[35]

During this litigation in federal court, Governor Ron DeSantis requested an advisory opinion from the Florida Supreme Court for its interpretation of "completion of all terms of sentence."[36] That court determined the "completion of all terms of sentence" "plainly refers to obligations and includes 'all'—not some—[legal financial obligations] imposed in conjunction with an adjudication of guilt."[37]

On October 18, 2019, the Northern District of Florida ruled in favor of the plaintiffs, finding "*[a]ccess to the franchise cannot be made to depend on an individual's financial resources*."[38] On November 15, 2019, the governor appealed to the Eleventh Circuit Court of Appeals.[39] The Eleventh Circuit affirmed the Northern District of Florida, finding

31. The 14th Amendment provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend XIV, § 1.

32. Complaint, Mendez v. DeSantis, No. 4:19-cv-272 (N.D. Fla. filed June 15, 2019); Complaint, Gruver v. Barton, No. 1:19-cv-121 (N.D. Fla. filed June 28, 2019); Complaint, Jones v. DeSantis, No. 4:19-cv-300 (N.D. Fla. filed June 28, 2019); Complaint, Raysor v. Lee, No. 4:19-cv-301 (N.D. Fla. filed June 28, 2019); Complaint, McCoy v. DeSantis, No. 4:19-cv-304 (N.D. Fla. filed July 1, 2019).

33. Complaint at 1–2, *Mendez*, Case 4:19-cv-00272-WS-CAS; Complaint at 4–6, *Gruver*, Case 1:19-cv-00121-MW-GRJ; Complaint at 1–2, *Jones*, Case 4:19-cv-00300-MW-MJF; Complaint at 3–4, *Raysor*, Case 4:19-cv-00301-MW-MJF; Complaint at 4, *McCoy*, Case 4:19-cv-00304.

34. Complaint at 67–69, *Gruver*, Case 1:19-cv-00121-MW-GRJ.

35. Order Denying Mot. to Dismiss and Prelim. Injunction, Jones v. DeSantis, (Case 4:19-cv-00300-RH-MJF), 2019 U.S. Dist. LEXIS 180624, at *2 (N.D. Fla. filed June 28, 2019).

36. Letter from Gov. Ron DeSantis to Chief Justice Canady and the Justices of the Florida Sup. Ct. (Aug 9, 2019).

37. Advisory Opinion to the Governor Re: Implementation of Amendment 4, The Voting Restoration Amendment, 288 So.3d 1070, 1075 (Fla. 2020).

38. Jones v. DeSantis, 410 F. Supp. 3d 1284, 1301 (N.D. Fla. 2019) (citing Johnson v. Governor of Fla., 405 F.3d 1214, 1216–17 n.1 (11th Cir. 2005)) (emphasis in original).

39. Jones v. DeSantis, 950 F.3d 795, 805 (11th Cir. 2020).

the trial court did not abuse its discretion in finding the proposed legislation violated returning citizens' constitutional rights.[40]

The governor then appealed to the Eleventh Circuit, *en banc*, claiming that Senate Bill 7066 did not create wealth-based discrimination for returning citizens who wished to register to vote.[41] Due to the immediacy of upcoming elections, the *Jones* plaintiffs sent a petition to the United States Supreme Court, who denied their application to vacate the stay placed by the Eleventh Circuit while the case was pending.[42] On September 11, 2020, the Eleventh Circuit, *en banc*, sided with Florida and upheld Senate Bill 7066.[43] The bill has been codified as Florida Statute § 98.0751 (2)(a)(5).[44] Throughout the *Jones* saga, there was only one mention of the Fifteenth Amendment argument.[45]

Florida Senate Bill 7066, which limits the primary purpose of Florida Constitution Article 6 § 4(a), is unconstitutional because it violates the Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution. This Article will explore how the bill violates the Fifteenth Amendment. First, historical considerations of the Fifteenth Amendment show why the Fifteenth Amendment was drafted and how it was interpreted in the years following its ratification. Then, over time, Supreme Court decisions interpreted the class protections that the Amendment provides. This Article will argue that returning citizens belong to the classes protected under the Fifteenth Amendment.

I. THE HISTORICAL CONSIDERATIONS OF THE FIFTEENTH AMENDMENT

The Fifteenth Amendment to the United States Constitution provides "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."[46] When the Amendment was first ratified, this right was interpreted by the United States Supreme Court to apply to emancipated slaves.[47] Today, this right is interpreted as the basic

40. *See id.* at 829.

41. Brief of Defendants-Appellants, Jones v. DeSantis, 2020 WL 5493770 (11th Cir. June 19, 2020), 2020 WL 3446227, at *12.

42. Raysor v. DeSantis, 140 S. Ct. 2600, 2600 (2020). In her dissent, Justice Sotomayor wrote, "This Court's order prevents thousands of otherwise eligible voters from participating in Florida's primary election simply because they are poor. . . . This Court's inaction continues a trend of condoning disfranchisement." *Id*. at 2600, 2603.

43. *See* Jones v. Governor of Fla., No. 20-12003, 2020 WL 5493770, at *9 (11th Cir. Sept. 11, 2020).

44. *See* FLA. STAT. § 98.0751(2)(a)(5) (2019). This Article was originally written in Fall 2019. For the purposes of this Article, the new statute will not be referenced.

45. *See* Complaint at 67–69, Gruver v. Barton, Case 1:19-cv-00121-MW-GRJ (N.D. Fla. filed June 28, 2019).

46. U.S. CONST. amend. XV, § 1.

47. Rice v. Cayetano, 528 U.S. 495, 512 (2000).

right for qualified individuals to exercise the right to vote, without racial discrimination.[48]

A. *The Reconstruction Amendments Were Constructed to Appease Political Participants Into Reconstructing the United States After the Civil War*

Slavery was partially eradicated when the Thirteenth Amendment was ratified in 1865.[49] Following the eradication of slavery, the United States government had to grapple with integrating a new population into society. This interest had to be weighed against re-integrating the states that seceded during the Civil War.[50] To reconcile these two goals, lawmakers advocated the three Reconstruction Amendments.[51]

The Reconstruction Amendments aimed to outlaw slavery, provide citizenship to emancipated slaves, and protect the voting rights of formerly enslaved individuals.[52] Republican lawmakers strategically planned the wording of the three Amendments to appease their political base following the Civil War,[53] expand their voting base,[54] and eliminate their lingering postwar issues.[55] These lawmakers knew the racial hierarchy in the South, and used this understanding throughout the Civil War and Reconstruction for political gain.[56] With Republican lawmakers reluctant to permanently define what was meant through the

48. *Id.*

49. *See* W. E. B. DU BOIS, BLACK RECONSTRUCTION 188 (1935).

50. *See* KENDI, *supra* note 22, at 229–47 (explaining the transition from the Civil War into Reconstruction and the legal landscape Congress created).

51. *See* U.S. CONST. amend. XIII, XIV, XV; *see also Landmark Legislation: Thirteenth, Fourteenth, & Fifteenth Amendments*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/CivilWarAmendments.htm [https://perma.cc/CVD3-SSJH] (last visited Oct. 3, 2020).

52. *See* KENDI, *supra* note 22, at 232, 241, 245.

53. *See id*. at 235 (discussing how the Thirteenth Amendment's language "except as a punishment for crime" gave Southern politicians a way to rebuild the South to mimic antebellum society).

54. *See id*. at 245 (discussing why Republicans chose to support the Fifteenth Amendment as a way to maintain a political majority as Southern politicians returned to Congress).

55. *See id*. at 241 (explaining that Republicans used the Fourteenth Amendment to punish Confederates more than to create a failsafe constitutional Amendment to protect against racial discrimination).

56. For example, President Abraham Lincoln understood what the institution of slavery meant and worked to maintain the Union rather than protect enslaved individuals. *See* ABRAHAM LINCOLN, FIRST LINCOLN-DOUGLAS DEBATE, *in* THE PORTABLE ABRAHAM LINCOLN (Andrew Delbanco ed., 1992) (Lincoln expressed that he had "no purpose directly or indirectly to interfere with the institution of slavery in the States where it exists."); *see also* ABRAHAM LINCOLN, LETTER TO HORACE GREELEY, AUGUST 22, 1862, *in* THE PORTABLE ABRAHAM LINCOLN (Andrew Delbanco ed., 1992) ("If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do it.").

Reconstruction Amendments,[57] activists, former Confederates, and businesspeople rushed to the courts to define the scope of each of the Amendments.[58] Of the three Amendments, the Fifteenth Amendment appears to have the least facial ambiguity. However, whether the Amendment was supposed to undeniably guarantee voting rights has been left to the court's interpretation, as intended by lawmakers when the Amendment was written.[59]

1. During Reconstruction, the United States Supreme Court Limited the Fifteenth Amendment to Prevent Only State-Sponsored Voter Rights Discrimination

During Reconstruction, the United States Supreme Court had three opportunities to interpret the Fifteenth Amendment.[60] The first opportunity was the *Slaughter-House Cases*.[61] The *Slaughter-House Cases* were actions brought by butchers in Louisiana challenging a state statute that limited the butchering trade.[62] The butchers claimed the state statute violated the Thirteenth and Fourteenth Amendments to the United States Constitution.[63] Here, the Supreme Court provided the first comprehensive evaluation of the three Reconstruction Amendments, taken together.[64]

In the *Slaughter-House Cases*, the Supreme Court hinted at the Fifteenth Amendment. It determined that formerly enslaved people were granted citizenship under the Fourteenth Amendment.[65] Because this class was granted citizenship, the class had the right to vote.[66] The Court

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57. *See* KENDI, *supra* note 22, at 241 ("Republicans did not deny Democrats' charges that the [Fourteenth] Amendment was 'open to ambiguity and . . . conflicting constructions.'") (alteration in original).

58. *See id.*

59. *See* Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 CASE W. RES. L. REV. 727, 733–35 (1998) (discussing the various disenfranchisement efforts in the South post-enactment of the Fifteenth Amendment and the Supreme Court cases which overturned the de jure ballot exclusion).

60. *See* Slaughter-House Cases, 83 U.S. 36, 71 (1873); Minor v. Happersett, 88 U.S. 162, 175 (1874); United States v. Reese, 92 U.S. 214, 217 (1875); *see* Jon Greenbaum, Alan Martinson & Sonia Gill, Shelby County v. Holder*: When the Rational Becomes Irrational*, 57 HOWARD L.J. 811, 816 (2013–2014) (stating Reconstruction ended in 1876).

61. *Slaughter-House Cases*, 83 U.S. at 71.

62. *Id.* at 57, 60.

63. *Id.* at 58.

64. Isaac Chotiner, *The Buried Promise of the Reconstruction Amendments*, NEW YORKER (Sept. 9, 2020), https://www.newyorker.com/news/q-and-a/the-buried-promise-of-the-reconstruction-amendments [https://perma.cc/QJM6-QA3W] ("[S]tarting way back, even during Reconstruction with the Slaughterhouse Cases, in 1873, the Supreme Court began whittling away, narrowing the scope of the Reconstruction amendments . . . .").

65. *Slaughter-House Cases*, 83 U.S. at 71.

66. *Id.*

then explained the purpose of the Thirteenth, Fourteenth, and Fifteenth Amendments was to secure "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."[67]

The Fifteenth Amendment was created to protect the voting rights of freed people.[68] Collectively, the three Amendments protected the interests of emancipated slaves.[69] The Fifteenth Amendment's language is used by the Court in *Slaughter-House* to show that the protections preclude discrimination based on race, color, and previous condition of servitude.[70] Further, the Court explicitly stated that the Fifteenth Amendment intended for all freed slaves to be able to vote: "The negro having, by the [F]ourteenth [A]mendment, been declared to be a citizen of the United States, is thus made a voter in every State of the Union."[71] This clear classification, and the novelty of the evaluation demonstrates that the Supreme Court in 1873 intended for Black people to have the right to vote.

In the *Slaughter-House Cases*, the United States Supreme Court outlined the classes that the Reconstruction Amendments protect.[72] The plaintiffs were white butchers in Louisiana challenging a state statute.[73] The Court explained that these Amendments, while providing new protections for all, were drafted to consider the integration of emancipated slaves into the new social order.[74] The Court clarified that these Amendments were intended to apply the protections to people enslaved before the end of the Civil War.[75]

The next time the Supreme Court could define the Fifteenth Amendment was in *Minor v. Happersett*.[76] In *Minor*, a white woman was seeking relief because she was denied the right to register as a lawful

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67. *Id.*

68. *Id.*

69. *Id.* at 81 ("The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied . . . .").

70. *Id.* at 71.

71. Slaughter-House Cases, 83 U.S. 36, 71 (1873)

72. *Id.* at 71–72.

73. Jonathan Lurie, *Reflections on Justice Samuel F. Miller and the* Slaughter-House Cases*: Still a Meaty Subject*, 1 N.Y.U. J.L. & LIBERTY 355, 367 (2005).

74. *Slaughter-House Cases*, 83 U.S. at 71–72.

75. *Slaughter-House Cases*, 83 U.S. at 89–90 ("[The Thirteenth Amendment] prohibits slavery and involuntary servitude, except as a punishment for crime. . . . I have been so accustomed to regard it as intended to meet that form of slavery which had previously prevailed in this country, and to which the recent civil war owed its existence, that I was not prepared, nor am I yet, to give to it the extent and force ascribed by counsel.").

76. Minor v. Happersett, 88 U.S. 162 (1874).

voter in Missouri.[77] The Court explained the concept of citizenship by defining what scope it will accept and where it is not yet prepared to go.[78]

In *Minor*, the Fourteenth and Fifteenth Amendments were considered together to determine suffrage rights.[79] The Court determined that a child born in the United States, whose parents are citizens, is a citizen of the United States.[80] It also outlined that it was not willing to reconcile the "doubts" as to whether "children born within the jurisdiction without reference to the citizenship of their parents" were citizens as well.[81]

When the Court narrowed the question of which citizens were protected under the Fifteenth Amendment, it moved away from the specific class the Fifteenth Amendment was supposed to protect: emancipated slaves.[82] The Fourteenth Amendment should have reconciled the doubts that the court was not willing to interpret because it outlined birthright citizenship. It is clear the Court understood this and ignored it because it references free white men's ability to vote.[83] With *Minor*, the new scope of the Fifteenth Amendment was that the "Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void."[84]

The *Slaughter-House Cases* and *Minor* demonstrate the rush to the courts to define the scope of the Reconstruction Amendments. In both cases, white plaintiffs were using the ambiguous language to define the Amendments in such a way to expand their own political agenda. *Slaughter-House* was used to challenge the overall Reconstruction process[85] while *Minor* was used to advocate for universal suffrage for white women.[86] Each case tried to clarify the scope of the Reconstruction Amendments to show how the ambiguous language created emerging

77. *Id.* at 165.

78. *Id.* at 166.

79. *Id.* at 175.

80. *Id.* at 168.

81. *Id.* at 167–68.

82. Kevin Christopher Newsom, *Setting Incorporationism Straight: A Reinterpretation of the* Slaughter-House Cases, 109 YALE L.J. 634, 651–52 (2000).

83. *Minor*, 88 U.S. at 173.

84. *Id.* at 178.

85. Lurie, *supra* note 77, at 359–66.

86. James Blacksher & Lani Guinier, *Free at Last: Rejecting Equal Sovereignty and Restoring the Constitutional Right to Vote* Shelby County v. Holder, 8 HARV. L. & POL'Y REV. 39, 56 (2014).

issues.[87] They also tried to force the Court to clarify the protected classes for the Amendments.[88]

The last case considered during Reconstruction that defined the Fifteenth Amendment was *United States v. Reese*.[89] *Reese* concerned a criminal investigation against two inspectors that refused to count the vote of William Garner.[90] William Garner was a Black man in Kentucky who tried to participate in a local election.[91] The question before the Court was whether the Fifteenth Amendment provides a mechanism to punish those who discriminate against others who wish to vote.[92] The discrimination had to be based on the protected classes of race, color, or previous condition of servitude.[93]

The Court reasoned that the Fifteenth Amendment protects those wishing to engage in the elective process.[94] It found that while the Amendment provides this protection, it does not outline a punishment for those who discriminate.[95] The Fifteenth Amendment is defined as "not confer[ing] the right of suffrage upon any one. It prevents the States, or the United States . . . from giving preference . . . to one citizen of the United States over another on account of race, color, or previous condition of servitude."[96] The Court concluded that Garner did not have an affirmative right to vote through the Fifteenth Amendment.[97] It also stated that neither Congress nor the Fifteenth Amendment outlines punishment for violating the Fifteenth Amendment.[98] So, those who discriminate in states where Black people may not vote could not be punished. [99]

The shift from *Slaughter-House* to *Minor* to *Reese* demonstrates that jurists of the time aligned ideologically with the executive branch.[100] Legislators were concerned with gaining power: Southern Confederates

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87. *See* Lurie, *supra* note 77 (discussing the litigation strategy for the *Slaughter-House* plaintiffs who were trying to dismantle Reconstruction in Louisiana and return the political and social structure to an antebellum racial caste system).

88. *See* Blacksher & Guinier, *supra* note 90, at 56–61 (discussing how white women fighting for voting rights sought judicial clarification in each of the Amendments that provided a new protection but was unclear in the exact classes that were to be protected).

89. 92 U.S. 214, 217 (1875).

90. *Id.* at 215.

91. *Id.* at 224.

92. *Id.* at 216.

93. *Id.*

94. *Id.* at 218.

95. *Reese*, 92 U.S. at 217–20.

96. *Id.* at 217.

97. *Id.*

98. *Id.* at 218, 221.

99. *Id.* at 220.

100. Leslie F. Goldstein, *How Equal Protection Did and Did Not Come to the United States, and the Executive Branch Role Therein*, 73 MD. L. REV. 190, 196 (2013).

were concerned with regaining the power they had before the war; Northern Unionists were concerned with rebuilding the Union and holding the rebellious states accountable.[101] As president, Ulysses Grant was determined to stay moderate about Black suffrage.[102] He stated that Northerners believed that "there would be a time of probation, in which the ex-slaves could prepare themselves for the privileges of citizenship before the full right would be conferred."[103] Grant stated that he was prepared to follow that thinking, had it not been for his predecessor, President Andrew Johnson, becoming sympathetic to Southern politicians.[104] To preserve the Union, and to balance control, President Grant "favored immediate enfranchisement."[105]

Slaughter-House was decided by the Chase Court (1864–1873) while the Waite Court (1874–1888) decided *Minor* and *Reese*.[106] The Court's reasoning remained consistent in trying to "moderately" protect the civil rights of African Americans.[107] In cases such as *Reese*, the Waite Court opened up loopholes where civil rights could be limited by the states.[108] But in cases like *Slaughter-House*, the Chase Court maintained that the Reconstruction Amendments were to protect the civil rights of freed slaves and Black people.[109] During Reconstruction, the Court "upheld civil rights principles in important cases,"[110] but it did not take the opportunity to prevent legal loopholes for the states to ignore federal law.[111]

The Waite Court attempted to close these loopholes in two cases that alluded to the new constitutional provisions, but did not directly interpret them.[112] In both *Ex parte Yarbrough* and *United States v. Cruikshank*, the Supreme Court was reviewing the criminal convictions of white men accused of harassing Black men attempting to exercise their civil rights.[113] In both cases, the Court seemed to interpret the Fifteenth Amendment as providing Black men with the right to vote in state

101. ULYSSES S. GRANT, PERSONAL MEMOIRS OF U.S. GRANT, 479–80 (The Project Gutenberg, 2004) (1885–86) (ebook).

102. *Id.* at 480.

103. *Id.*

104. *Id.* at 479–80.

105. *Id.* at 480.

106. Goldstein, *supra* note 100, at 196–97.

107. *Id.* at 196.

108. *Id.* at 196–97.

109. *Id.*

110. *Id.* at 197–98.

111. *Id.* at 196–97.

112. *Ex parte* Yarbrough, 110 U.S. 651, 665 (1884); United States v. Cruikshank, 92 U.S. 542, 555–56 (1876).

113. *See* 110 U.S. at 655–56; 92 U.S. at 557.

elections.[114] The Court maintained its pseudo-commitment in upholding civil rights by including the language that indicated that the Fifteenth Amendment guaranteed protection against race-based voter discrimination.[115] This commitment was not effective, however, as both cases are largely ignored.[116]

After Reconstruction, lawyers looked toward limiting the Fifteenth Amendment by narrowing the legal standard that had to be met to show a voting practice was unconstitutional.[117] As litigation related to the Fifteenth Amendment proceeded, the protections provided by the Amendment became obsolete.

II. THE EVOLUTION OF THE FIFTEENTH AMENDMENT CLASS PROTECTIONS

When the Supreme Court decided *Slaughter-House*, *Minor*, *Reese*, and *Cruikshank*, the only definitive interpretation of the Fifteenth Amendment it provided was there shall be no state-sponsored voter discrimination based on race.[118] In these decisions, the Court proved capable of understanding how Southern ideals and white supremacy would, and did, prevent Black people from voting.[119] However, the Court failed to interpret another critical piece of the Fifteenth Amendment: "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . on account of . . . *previous condition of servitude*."[120] From its enactment to today, the Fifteenth Amendment's narrow interpretation has caused it to lose its power and has prevented it from protecting the rights of the individuals it is supposed to protect.[121]

A. *The Class the Fifteenth Amendment Protects Changed Over Time to Consider Only Race-Based Voter Discrimination*

After Reconstruction, the Supreme Court gradually considered whether voting rights were fundamental, and if they were, who could participate. *Ex parte Yarbrough* provided the Court the opportunity to

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114. *See Ex parte Yarbrough*, 110 U.S. at 665 ("In such cases [where state law limited voting rights to whites, the Fifteenth] amendment does, *proprio vigore*, substantially confer on the negro the right to vote, and [C]ongress has the power to protect and enforce that right."); *see also Cruikshank*, 92 U.S. at 555–56 (restating the Fifteenth Amendment confers on Congress the power to protect the right to be free of race discrimination in voting).

115. *See Cruikshank*, 92 U.S. at 555–56.

116. A Shepard's review of both cases shows that the Fifteenth Amendment interpretation in *Cruikshank* was cited 29 times and the one in *Ex parte Yarbrough* was cited 7 times.

117. *See* Greenbaum et al., *supra* note 60.

118. *See Cruikshank*, 92 U.S. at 555–56.

119. *See* United States v. Reese, 92 U.S. 214, 224 (1875); *see also Cruikshank*, 92 U.S. at 556.

120. U.S. CONST. amend. XV (emphasis added).

121. *See* Greenbaum et al., *supra* note 60, at 866.

clear up its confusing interpretation of the Fifteenth Amendment, while also providing space for the Court to think about how race would affect voting rights.[122]

In 1883, Berry Saunders, a Black man, tried to participate in Georgia's congressional election.[123] Three white men disguised themselves and assaulted Saunders.[124] The men were arrested and convicted for conspiring to violate Saunders' constitutional rights.[125] In *Ex parte Yarbrough*, the Supreme Court reviewed the convictions and sentences to determine whether a constitutional violation occurred.[126] In this review, the Court considered the Fifteenth Amendment post-Reconstruction.[127]

In *Ex parte Yarbrough*, the Court reviewed the Fifteenth Amendment to determine "the constitutional authority for federal legislation concerning" voting rights and the right to vote in congressional elections.[128] The Court determined that the Fifteenth Amendment "clearly shows that the right of suffrage was considered to be of supreme importance to the national government, and was not intended to be left within the exclusive control of the states."[129] It also reasoned that the right to vote was "[guaranteed] by the Constitution and should be kept free and pure by congressional enactments whenever that is necessary."[130] The Court emphasized that the Fifteenth Amendment was intended to protect people of African descent.[131] The Court inadvertently placed a narrow limitation on precisely what harm must be shown to establish a Fifteenth Amendment violation.[132] The Court's language also provided a foundation to explain how voting is a fundamental right.

Ex parte Yarbrough provided a foundation for the idea that voting is a fundamental right. It explained that the Fifteenth Amendment provided a mechanism to protect African Americans and designed a way to ensure they enjoyed a basic civil right:

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122. Emma Coleman Jordan, *Taking Voting Rights Seriously: Rediscovering the Fifteenth Amendment*, 64 NEB. L. REV. 389, 394 (1985).

123. *Id.* at 393.

124. *Id.*

125. *Ex parte Yarbrough*, 110 U.S. at 652, 655–57.

126. *Id.* at 654.

127. *Id.* at 664–65

128. Jordan, *supra* note 126, at 394.

129. *Ex parte Yarbrough*, 110 U.S. at 664.

130. *Id.* at 665.

131. *Id.*

132. *See, e.g.*, Nixon v. Herndon, 273 U.S. 536, 541 (1927) (declaring that a plaintiff that claimed racial discrimination in a voting law had legal standing); *see also, e.g.*, Nixon v. Condon, 286 U.S. 73 (1932) (deciding that state law preventing Black people from voting was unconstitutional).

> This new constitutional right [explained in *United States v. Reese*] was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress, is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote in general as to the right to be protected against discrimination. The exercise of the right in both instances is guaranteed by the Constitution, and should be kept free and pure by congressional enactments whenever that is necessary. . . . For, while it may be true that acts which are mere invasions of private rights, which acts have no sanction in the statutes of a State, or which are not committed by any one exercising its authority, are not within the scope of that amendment, it is quite a different matter when Congress undertakes to protect the citizen in the exercise of rights conferred by the Constitution of the United States essential to the healthy organization of the government itself.[133]

Taken alone, *Ex parte Yarbrough* would not be persuasive because of the precedent provided during Reconstruction. However, the year after *Ex parte Yarbrough*, the Supreme Court expanded this foundation with its decision in *Yick Wo v. Hopkins*.[134] In *Yick Wo*, the Supreme Court stated that voting, "[t]hough not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it is regarded as a fundamental political right, because preservative of all rights."[135] Together, *Ex parte Yarbrough* and *Yick Wo* evidence the Court's acceptance that voting is a fundamental right.[136] However, the Court was unclear about the proper enforcement mechanism for ensuring all men could exercise the right.[137]

After *Yick Wo*, litigation about the Fifteenth Amendment arose together with other constitutional violations including poll taxing[138] and gerrymandering.[139] In these cases, the Court dealt with the Fifteenth Amendment in idealistic terms. At no point did it consider further defining which classes were protected by the Amendment.[140] The Court

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133. *Ex parte Yarbrough*, 110 U.S. at 665–66.

134. 118 U.S. 356 (1886).

135. *Id.* at 370.

136. *See* Jordan, *supra* note 126, at 395.

137. *Id.* at 395–97.

138. Harper v. Va. Bd. of Elections, 383 U.S. 663, 664 (1966).

139. Baker v. Carr, 369 U.S. 186, 187–92 (1962); *See generally* Jordan, *supra* note 126, at 395–97.

140. Marc Edward Rivera And Shimica D. Gaskins, *Previous Conditions of Servitude: A Fifteenth Amendment Challenge to Ex-Felon Disenfranchisement Laws*, 1 GEO. J.L. & MOD. CRIT. RACE PERSP. 153, 155 (2008) (stating that "[w]hile the Supreme Court's Fifteenth Amendment

has failed to recognize that previous condition of servitude constitutes a class distinct from racial classification and should also be protected under the Fifteenth Amendment.

B. *The Fifteenth Amendment was Intended to Also Protect the Rights of Returning Citizens*

The Fifteenth Amendment declares that voting rights are protected based on "race, color, and previous condition of servitude."[141] In cases like *Slaughterhouse* and *Yick Wo*, race and color were defined for purposes of determining whether discrimination has occurred. The Supreme Court has only discussed the definition of "previous condition of servitude" to address emancipated people of African descent after the Civil War.[142] However, focusing on this narrow definition is to only understand United States history as a moment of transition from the antebellum to the post-Civil War era.

The Thirteenth Amendment provided a loophole allowing slavery to continue existing in the United States. The Amendment states "[n]either slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction."[143] Following the Civil War, Southern landowners faced a dilemma: finding a labor force to replace the enslaved people that previously farmed the crops.[144] Southern states responded to this dilemma by developing laws and practices to regulate labor.[145] Collectively, the responsive laws passed during the Reconstruction era were known as Black Codes.[146]

The Black Codes allowed the legacy of slavery to continue after enslaving humans was declared illegal. Many laws codified in these codes existed in the antebellum South.[147] The codes followed the Georgia model, which came after the Mississippi and South Carolina Codes.[148] The Georgia Code had four main elements: "enticement, vagrancy,

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jurisprudence has yet to define 'previous condition of servitude,' the word 'servitude' is explicitly defined in the text of the Thirteenth Amendment. . . .").

141. U.S. CONST. amend XV, § 1.

142. *See Slaughter-House Cases*, 83 U.S. 36, 71 (1873); *see also Ex parte Yarbrough*, 110 U.S. at 664 (1884).

143. U.S. CONST. amend XIII, § 1 (emphasis added).

144. Brian Sawers, *Race and Property After the Civil War: Creating the Right to Exclude*, 87 MISS. L.J. 703, 724 (2018).

145. *Id.* at 733–40.

146. *Id.* at 720.

147. *Id.*

148. *Id.* at 721, 733. The original Mississippi and South Carolina Black Codes were legally problematic because they focused on criminalizing activities performed by people of African descent. Consequently, the federal government restricted these original codes. *Id.* at 721.

apprenticeship, and criminalized trespass."[149] The post-bellum codes were different because they were race-neutral and did not apply exclusively to people of African descent according to the black letter law.[150] However, the landowning class coerced emancipated people into labor and poverty.[151]

The vagrancy provisions of the Black Codes are one of the direct links from slavery to the legal loophole created by the Thirteenth Amendment.[152] Vagrancy statutes forced emancipated people into work:

> Vagrancy was defined broadly, allowing sheriffs and judges to force black people into work. Mississippi defined the "idle" as vagrants, without requiring a showing that the vagrant was destitute. Also, vagrants included "persons who neglect their calling or employment, [or] misspend what they earn." In Alabama, vagrants were defined to include "stubborn servant[s]." Even attempts to demand higher wages could risk a charge of vagrancy. Virginia defined vagrancy to include refusing "the usual and common wages given to other laborers." While vagrancy statutes might be race-blind, one planter, former slaveowner, and Klansman noted, "[t]he vagrant contemplated was the plantation negro."[153]

One punishment for violating vagrancy laws was that vagrants were bound to a term of servitude.[154] Another punishment was that those who were convicted were ordered to pay either a fine or court cost.[155] Failure to pay these fines could cause the convicted person to be forced into performing public work for the county.[156] The worst punishment was that a violating individual could be convicted of a misdemeanor and sentenced to a state or county chain gang.[157]

When contemplating the Black Codes and the emerging labor laws, southern lawmakers considered whether the statutes would create civil wrongs or criminal offenses.[158] Ten of the eleven states that enacted these

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149. *Id.* at 733.

150. *Id.* at 733–34.

151. Sawers, *supra* note 149, at 733–34.

152. *See id.*

153. *Id.* at 734–35.

154. *A Different Kind of Slavery*, EQUAL JUSTICE INITIATIVE (July 25, 2018), https://eji.org/news/history-racial-injustice-different-kind-of-slavery/ [https://perma.cc/KPL8-A9UG]; *See* Act of Dec. 15, 1865, § 4, 1865-66 Ala. Laws 119, 120; *See* Act of Mar. 12, 1866, § 1, 1865–66 Ga. Laws 119, 234.

155. Sawers, *supra* note 149, at 739.

156. *Id.*

157. Jennifer Roback, *Southern Labor Law in the Jim Crow Era: Exploitative or Competitive*, 51 U. CHI. L. REV. 1161, 1168 (1984).

158. *Id.* at 1166.

new laws made the statutes criminal offenses.[159] For example, in 1867, two-thirds of Texas prisoners were white "but 90 percent of those hired out were black."[160] By 1930, thirty-seven percent of Georgia's state population was Black.[161] That prison population was eighty-three percent Black by 1932.[162] Of that population, ninety percent of Black people convicted of felonies were sentenced to chain gangs and ninety-five percent of Black people convicted of misdemeanors were sentenced to county labor.[163]

The driving force of antebellum slavery was free labor, and the driving force behind the post-bellum labor laws was to maintain a cheap labor force.[164] Lawmakers took advantage of the loophole in the Thirteenth Amendment by creating laws that criminalized behaviors that challenged the system to maintain cheap labor.[165] With the direct link between antebellum slavery and the new penal system that essentially created slavery by another name, the definition of the phrase "previous condition of servitude" cannot only apply to emancipated slaves. The phrase "previous condition of servitude," as provided in the Constitution,[166] should also apply to returning citizens or individuals convicted of felonies who have served their prison sentence and finished their probation.

III. FLORIDA SENATE BILL 7066 VIOLATES THE FIFTEENTH AMENDMENT

Florida Senate Bill 7066 violates the Fifteenth Amendment to the United States Constitution because it abridges the right of returning citizens to vote. Federal law allows a civil action when any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."[167] To prevail on a civil action for the deprivation of right under 42

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159. *Id.*

160. Sawers, *supra* note 149, at 739.

161. William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J.S. HIST. 31, 57 (1976).

162. *Id.*

163. *Id.* at 58 tbl.2.

164. Sawers, *supra* note 149, at 728.

165. *See* Roback, *supra* note 162, at 1163–66. (providing an extensive overview of the kind of laws passed after Reconstruction and into the early twentieth century); Examples of vagrancy laws during this period include the following: Act of Sept. 22, 1903, No. 229, 1903 Ala. Acts 244; Act of May 6, 1905, No. 283, 1905 Ark. Acts 702; Act of May 29, 1905, No. 48, 1905 Fla. Laws 97; Ga. Code vol. III, § 453 (1895); Act of July 8, 1908, No. 205, 1908 La. Acts 308; Act of Feb. 29, 1904, ch. 144, 1904 Miss. Laws 199; Act of Mar. 4, 1905, ch. 391, 1905 N.C. Sess. Laws 41; Act of Dec. 22, 1893, No. 348, 1893 S.C. Acts 521; Act of Mar. 24, 1875, § 1, 1875 Tenn. Pub. Acts 188; Act of Mar. 17, 1909, ch. 59, 1909 Tex. Gen. Laws 111; Act of Jan. 2, 1904, ch. 548, § 884, 1902-04 Va. Acts 876.

166. U.S. CONST. amend. XV, § 1.

167. 42 U.S.C. § 1983.

U.S.C. § 1983, a plaintiff must show (1) "the defendant has deprived him of a right secured by the 'Constitution and laws' of the United States" and (2) "the defendant deprived him of this constitutional right . . . 'under color of law.'"[168] Returning citizens disenfranchised by Senate Bill 7066 have a claim under federal law because they meet the burden of proof for both elements.

Returning citizens meet the first element because they are a class protected under the Fifteenth Amendment whose right to vote is being abridged by virtue of their status as returning citizens. In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*,[169] the Supreme Court provided a mechanism to prove discriminatory intent even if a law appears facially neutral. To identify discriminatory intent, a court may consider the following factors: (1) whether the law disproportionately affects one race over another; (2) the historical background of the law; (3) the specific event sequence leading to the law; (4) departure from normal procedural sequence; and (5) the legislative history, including "contemporary statements by members of the decision[-]making body, minutes of its meetings, or reports."[170] Returning citizens also meet the second element under 42 U.S.C. § 1983 given that the named defendants in the federal case are state officials working in their official capacities.

To succeed in proving a Section 1983 claim under the Fifteenth Amendment, returning citizens can show discriminatory intent based on race, color, and previous condition of servitude. These classes are protected under the Constitution, and Florida Senate Bill 7066 disenfranchises individuals for belonging to those classes. Without litigation, returning citizens can show two of the *Arlington Heights* factors: the disproportionate impact and the discriminatory history of the law.

Before Amendment Four passed in the 2018 general election, more than ten percent "of Florida's voting population—nearly 1.7 million as of 2016"—could not vote.[171] More than twenty percent of all eligible Black Floridian voters were disenfranchised because of the restrictions placed on returning citizens. [172] In 2016, sixteen percent of Florida's population was Black.[173] Black people also made up thirty-three percent of returning citizens that were disenfranchised.[174] Black Floridians face disproportionate disenfranchisement because they are "more likely to be

168. Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970).

169. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266–68 (1977).

170. *Id.*

171. Hand v. Scott, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018).

172. *Id.*

173. Complaint at 30, Gruver v. Barton, No. 1:19-cv-121 (N.D. Fla. filed June 28, 2019).

174. *Id.*

arrested, charged, convicted, and face harsher sentences than white Floridians."[175]

The disparity in the Florida prison population can be explained by multiple factors. One historical explanation links the labor laws of the late-nineteenth and early-twentieth centuries.[176] Florida is one of the states that enacted a series of labor laws in 1865.[177] The state engaged in convict leasing until the 1920s.[178] As in other states, Florida's enforcement of labor laws disproportionately affected individuals of African descent.[179]

Before Senate Bill 7066, disenfranchising returning citizens violated the Fifteenth Amendment. The provision requiring returning citizens to pay fines and fees before regaining the right to vote further violates the Fifteenth Amendment because it disproportionately affects Black returning citizens.[180] In an expert study done to analyze the current system of monitoring and recording payment of fines and fees, Dr. Daniel A. Smith found eighty-two percent of individuals subject to Senate Bill 7066 would be disenfranchised.[181] Of that percentage, Black returning citizens would be disproportionately impacted by the law as compared to their white counterparts.[182] Regardless of this disparity, if courts can agree that there is a direct link between the current system of mass incarceration and the end of antebellum slavery, then the entire class of returning citizens can claim protection under the Fifteenth Amendment.

CONCLUSION

In 2018, voters made a bold statement by passing Amendment Four in Florida's general election. This statement was a clear declaration that the right to vote and participate in the political process is precious. This statement was bipartisan and clear. Current attempts to limit the power of Amendment Four through Senate Bill 7066 and subsequent measures currently being considered mimic the strategies used after the ratification of the Reconstruction Amendments to limit and shape their interpretation.

Though federal courts generally defer to state law when it comes to voting rights, Senate Bill 7066 cannot be ignored because it violates the Fifteenth Amendment. The Fifteenth Amendment protects voting rights based on race, color, and previous condition of servitude. To understand

175. *Id.*

176. Roback, *supra* note 162, at 1161 n.1.

177. Roback, *supra* note 162, at 1165.

178. *Id.*

179. Sawers, *supra* note 149, at 738–39.

180. Complaint at 30, Gruver v. Barton, No. 1:19-cv-121 (N.D. Fla. filed June 28, 2019).

181. Expert Report of Daniel A. Smith at 5, Jones v. DeSantis, No. 4:19-cv-300 (N.D. Fla. filed Aug. 2, 2019), ECF No. 98-3.

182. *Id.* at 6–7.

these protections is to understand how Southern society was established and maintained on a racial hierarchy. To protect the rights of all returning citizens is to imagine a new path to a democracy that does not uphold historical prejudices. Federal courts today can choose a new path. They can choose to understand and accept how the disparities that impact Black communities due to the system of mass incarceration are a continuation of the racial hierarchy of the antebellum south. To find that Senate Bill 7066 violates the Fifteenth Amendment is to take a step forward in protecting the rights for all citizens to access democracy.