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Cameron Katz April 2, 2021

“Civil Death”: Felony Disenfranchisement in Florida

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Abstract
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Felony disenfranchisement – the rule which revokes a person's right to vote on account of a felony conviction – was one of the most persistent forms of voter suppression in the United States. As with other forms of voter suppression, including poll taxes, grandfather clauses, and literacy tests, white legislators weaponized felony disenfranchisement to specifically target Black voters. While the gains of the Civil Rights Movement eventually dismantled other voter suppression tactics, felony disenfranchisement stayed and, in some states, continued to shape elections in the 21st century. One of these states was Florida, where felony disenfranchisement was implemented in 1838 and racialized in 1868. After the abolition of slavery, felony disenfranchisement proved an effective way to prevent Black voters from casting their ballots. Although seemingly a non-racial policy, the racial disparities of the criminal justice system ensured that felony disenfranchisement had a racial effect. The provision's link to criminality allowed for it to adapt to changing political climates of the 20th century.

It was not until the rise of mass incarceration did scholars, legislators, and activists begin to notice the effects of the provision on Black voting power. In 2018, the abandonment of felony disenfranchisement appeared possible, when 64.5% of Floridians voted to eliminate it in the midterm elections. Despite this decision, Republican leaders attempted to derail its abolition, a process which remains ongoing as of April 2021. This thesis examines the persistence of felony disenfranchisement from 1868 to 2021 and argues that the provision's racially disparate implementation explains its endurance over time.

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Cameron Katz
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Introduction

Felony disenfranchisement – the rule which revokes a person's right to vote on account of a felony conviction – has been on Florida's books since 1838, before it even achieved statehood. During the Reconstruction era in 1868, legislators broadened the provision, casting a wider net as to who could be disenfranchised because of a felony conviction. Not until 1974 did Florida legislators attempt to reduce the lifetime voting ban imposed by the law. After 1974, with the rise mass incarceration imprisoning more Americans than ever before, felony disenfranchisement underwent the most dynamic period of change in its history. By 2018, its removal was on the Florida ballot and, with a 64.5% majority, voters decided that this almost two-century-old provision should be abolished. Although felony disenfranchisement in Florida only gained attention recently, it was designed not just to exclude people who had committed crimes but specifically to exclude Black voters, and was always racially discriminatory. The bureaucratic maneuvering of the white politicians who introduced and maintained it was shrewd. Even in the Reconstruction days, legislators did not explicitly declare the racial motivations of felony disenfranchisement. Similarly, contemporary conservative politicians like former Florida governor, Rick Scott, have defended the policy, saying that race is "not a factor in this process" and that "saying otherwise is completely ignoring the facts…and is irresponsible."[1] But just because the law included no racial language does not mean it was without racial consequence. Throughout Florida's history, Black citizens have been stereotypically associated with crime and, as a result, disproportionately targeted by the criminal justice system. In this way, the racial

[1] Monivette Cordeiro, "Rick Scott Restored the Voting Rights of Twice as Many White Former Felons as Black Felons," *Orlando Weekly* (Orlando, FL), October 31, 2018. https://www.orlandoweekly.com/Blogs/archives/2018/10/31/rick-scott-restored-the-voting-rights-of-twice-as-many-white-former-felons-as-black-felons.

disparities of the criminal justice system have enabled felony disenfranchisement to limit Black voting power.

Tight elections are notorious in Florida. The most dramatic example was the 2000 presidential election, in which, in effect, George Bush won the presidency by 537 Florida votes. The majority of elections in the state have been won by razor thin margins. For instance, during the 2018 midterm – the same election in which voters abolished felony disenfranchisement – Republicans Rick Scott and Ron DeSantis won a Senate seat and the governorship respectively both by less than 0.5%. That year, felony disenfranchisement laws prevented nearly 1.7 million Floridians from voting.[2] The restoration of voting rights to this group, a disproportionate number of them Black and Democrat, by Amendment 4 would likely tilt future Florida elections in favor of Democratic candidates.[3] What might have started as an ostensibly race-neutral provision now could determine state and national elections.

Unlike other voter suppression tactics, such as poll taxes or grandfather clauses, felony disenfranchisement existed in several states before Reconstruction; Kentucky instituted the first felony disenfranchisement provision in 1792.[4] Because the policy existed before the abolition of slavery, one could assume that legislators had designed felony disenfranchisement as a way to exclude all those whose misconduct had led them to forfeit one of their rights as citizens. Such a perspective is philosophically justifiable, and many contemporary defenders of felony disenfranchisement have persuasively argued that violating the law *should* result in a loss of voting rights. The voters in question did commit crimes, sometimes violent ones, and so the

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[2] "Mass Incarceration: State-by-State Data." The Sentencing Project. https://www.sentencingproject.org/the facts/#map?dataset-option=SIR.

[3] Steve Bousquet, Connie Humburg, and McKenna Oxenden. "What's Riding on Amendment 4 and Voting Rights for Convicted Felons." *Tampa Bay Times* (Tampa, FL), November 2, 2018.

[4] Britannica, "Historical Timeline: U.S. History of Felon Voting/Disenfranchisement." ProCon. https://felonvoting.procon.org/historical-timeline/.

debates surrounding which rights they should keep and which they should lose were important to maintaining a safe society. However, during the Reconstruction period, many states, including Florida, had reconfigured these older provisions specifically to target Black people. The discriminatory nature of felony disenfranchisement meant that the policy was implemented unevenly across different racial groups. While the gains of the Civil Rights Movement in the 1960s eventually dismantled other Reconstruction-era prohibitors to the ballot box, felony disenfranchisement stayed, making it one of the most persistent forms of voter suppression in Florida's history. As this thesis will argue, its impact on Black voting power from 1868 onwards demonstrated that felony disenfranchisement was less about protecting American society than it was about restricting certain demographic groups from voting.

Because of its longevity, it is worth examining why felony disenfranchisement laws survived for so long. Unlike the other Reconstruction-era voter suppression tactics, felony disenfranchisement was linked to criminality. Because of its link to crime, legislators could justify it as a means to preserve the integrity of elections, and because it had existed in the country before Black people could vote, many observers balked at the idea that the policy was racist. For these white politicians, criminal disenfranchisement existed "in order to protect the ballot-box from the votes of thieves and felons" who might endanger the general public.[5] Therefore, the persistence of felony disenfranchisement – and the debate over it – lies partly in the rhetorical acrobatics of white politicians, who, over several generations, adapted their defenses of felony disenfranchisement to fit the racial climate and crime discourse of the time.

Over time, the language surrounding felony disenfranchisement grew increasingly race neutral, but its aim remained the same: to prevent Black citizens from exercising their right to

[5] Pippa Holloway, "'A Chicken-Stealer Shall Lose His Vote': Disfranchisement for Larceny in the South, 1874 1890," *The Journal of Southern History* 75, no. 4 (November 2009): 954.

vote. By the beginning of twentieth century, academic writings, legislators, and mass media had begun to strengthen decades-old associations between Blackness and criminality. High incarceration rates of Black citizens led many intellectuals, writers, and politicians alike to speculate about why so many Black people were in prison. Although racial profiling, the convict leasing system, and poverty were the primary culprits, many of these thinkers instead drew from scientific racism for some sort of explanation. They thought of race as an indicator of crime, so much so that, by the 1960s, politicians did not need to mention race at all when they spoke about crime. The white public knew which demographic group politicians were talking about. With felony disenfranchisement already enacted in many southern states, linking criminality and moral depravity with Blackness ensured that a disproportionate number of disenfranchised felons would be Black. In other words, because Black people were more likely to be considered criminals, they were more likely to become incarcerated and thus lose their voting rights. The disenfranchising power of the provision would only grow more formidable with the late-twentieth century advent of mass incarceration, which targeted, convicted, and imprisoned more people than ever before. The persistence of felony disenfranchisement in Florida meant that, by 2014, a fourth of Americans disenfranchised because of a felony conviction lived in the Sunshine State.[6]

Despite its relevance today, much of the scholarship about criminality, voter suppression, and racism has little to say about the phenomenon of felony disenfranchisement. Prominent works on the associations between Blackness and criminality by Khalil Gibran Muhammad, Naomi Murakawa, Michelle Alexander, and Elizabeth Hinton all mention felony disenfranchisement as an indicator of racial animus, but these authors are preoccupied with other

[6] Amy Sherman, "Voting Rights Activist Says One-Quarter of Disenfranchised Felons in U.S. Live in Florida," *Tampa Bay Times* (Tampa, FL), January 23, 2014.

issues.[7] The scholarship that does solely focus on felony disenfranchisement takes the form of contemporary social justice activism from organizations like the Brennan Center for Justice and the Sentencing Project. Even these organizations have not investigated the deeper history of felony disenfranchisement, nor the reasons for its persistence over time. Other scholarship focused on voter suppression by Leon Litwack and Carol Anderson covers a wider array of voting prevention tactics with emphasis on extralegal violence as an intimidation method.[8] Felony disenfranchisement, conversely, is a form of structural injustice, meaning that it uses the infrastructure of the state to inhibit an individual's rights, including suffrage. As extralegal violence tapered off in the south after World War II, this structural injustice remained. Furthermore, the narratives of the scholarly and activist interventions that have been made against felony disenfranchisement are often national in scope, either with a political or intellectual focus. While these revisions to a wider American history are certainly important, more work remains to be done on a state level. Therefore, the major contribution of this thesis will be to examine the effects of what Muhammad calls the "idea of black criminality" on the longevity of felony disenfranchisement in Florida.[9]

Although Florida is the southernmost tip of the continental United States, it is usually not considered a state of the "Deep South."[10] Unlike Mississippi or Alabama, Florida does not reliably turn red with every election cycle, and the further south one travels, the more liberal the

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[7] Elizabeth Kai Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2017); Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (4th ed. Cambridge, MA: Harvard University Press, 2019); Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (Oxford: Oxford University Press, 2014).

[8] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York, NY: Vintage Books, 2013); Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide*, (New York, NY: Bloomsbury USA, an imprint of Bloomsbury Publishing Plc, 2016).

[9] Muhammad, *The Condemnation of Blackness*, 1.

[10] Soo Oh, "Which states count as the South, according to more than 40,000 readers," *Vox*, September 30, 2016. https://www.vox.com/2016/9/30/12992066/south-analysis.

state becomes. Despite its unusual political makeup, Florida has a dark racial past like other "Deep South" states. According to the Equal Justice Initiative, 317 lynchings occurred in Florida between 1877 and 1950, and the state had the highest rate of lynchings per capita in the country.[11] Historians such as Michael Newton, Marvin Dunn, Paul Ortiz, and Daniel Weinfeld, and Adam Wasserman have all documented racial violence in the state, a history that is often neglected by more national narratives about race relations.[12] In terms of structural injustice, Florida led the charge; it was one of the first states to alter its felony disenfranchisement provision to target newly emancipated citizens during Reconstruction. As Ortiz puts it, "By almost any quantifiable social phenomenon, including lynching, educational outlays by race, incarceration rates, or legislative statutes, Florida looks like a state in the segregated South."[13] Therefore, scholarship should attend to Florida's role in crafting and upholding racially discriminatory policies in the South; the state's decisive role in national elections necessitates a closer look at suppression tactics that might have warped voting outcomes throughout its history.

This thesis contains four chronological chapters. The first chapter examines the establishment of felony disenfranchisement in Florida during the Reconstruction era, with focus on the tumult surrounding the 1868 Constitutional Convention. This chapter will establish the racial animus behind the expansion of Florida's felony disenfranchisement clause. Chapter two explores the immediate effects of felony disenfranchisement, primarily the demographic changes

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[11] Equal Justice Initiative, "Lynching in America: Confronting the Legacy of Racial Terror," (3d Ed. 2017).
[12] Michael Newton, *The Invisible Empire: The Ku Klux Klan in Florida* (Gainesville, FL: University Press of Florida, 2001); Marvin Dunn, *The Beast in Florida: A History of Anti-Black Violence* (Gainesville: University Press of Florida, 2013); Paul Ortiz, *Emancipation Betrayed: The Hidden History of Black Organizing and White Violence in Florida from Reconstruction to the Bloody Election of 1920* (Los Angeles, CA: University of California Press, 2006); Daniel R. Weinfeld, *The Jackson County War: Reconstruction and Resistance in the Post-Civil War Florida* (Tuscaloosa, AL: University of Alabama Press, 2012); Adam Wasserman, *A People's History of Florida: 1513 1876: How Africans, Seminoles, Women, and Lower Class Whites Shaped the Sunshine State* (4th ed. Sarasota, FL: A. Wasserman, 2010).
[13] Ortiz, *Emancipation Betrayed,* xxii.

in Florida's prison population and electorate. At the time, Florida's prison population was primarily Black, but this shift in demographics was not by chance. Not only did a predominantly Black prison population replace slave labor with convict labor, but, because of felony disenfranchisement, it also maintained white supremacy in the state's elections.[14] These demographic changes also occurred as Florida's carceral state – the formal institutions and social factors that make up the criminal justice system – expanded, creating the infrastructure necessary for a convict leasing system. Additionally, chapter two examines early challenges to felony disenfranchisement in the Florida court system as well as the spread of this policy to other Southern states rewriting their constitutions.

While the first two chapters focus on the advent and initial effects of felony disenfranchisement, the third chapter considers wider changes in the national discourse about criminality and the impact of these changes on the persistence of felony disenfranchisement. Chapter three briefly explores how the association between Blackness and criminality became stronger, beginning with the pseudoscientific race studies that grew out of the 1890 Census and ending with the post-World War II period.[15] These intellectual and cultural shifts in notions of criminality shaped the development of the carceral state and the prima facie race neutral language required to defend felony disenfranchisement in the United States after the Civil Rights Movement. After this contextual digression, chapter three then returns to Florida to investigate the effects of the shifting discourses on crime on legislators' decision to uphold felony

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[14] David M. Oshinsky, *'Worse than Slavery': Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press Paperbacks published by Simon & Schuster, 1997), 56.
Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South*, (Chapel Hill, NC: University of North Carolina Press, 2016).

[15] *To Secure These Rights: The Report of the President's Committee on Civil Rights*. Washington, D.C.: U.S. Government Printing Office, 1947.

disenfranchisement during the 1968 Constitutional Revision Commission (CRC).[16] Chapter 3 will then examine more recent changes and challenges to felony disenfranchisement, beginning in 1974. During this period, the state established a restoration process that had the power to undo the lifetime ban on voting; however, racial discrimination prevented this process from effectively restoring suffrage. The Brennan Center for Justice attempted to challenge felony disenfranchisement in *Johnson v. Bush* between 2000 and 2005, but the 11th Circuit Court of Appeals struck down claims of racial discrimination because racist language was absent from the provision. Following felony disenfranchisement's stint in court, Florida's Republican governor (who later became a Democrat) Charlie Crist (2007-2011) attempted to ease the restoration process, only for his modifications to be undone by his successor, Republican Rick Scott (2011-2019).

Finally, chapter 4 describes Amendment 4, a question put on the 2018 Florida midterm ballot that allowed voters to decide whether previously incarcerated people should have their rights automatically restored. Amendment 4 was the result of several activists' work across the state and country, and demonstrated a major shift in thinking about criminal justice. On November 6, 2018, Florida voters decided in a 64.5% majority that previously incarcerated people *should* have the right to vote; however, several Florida Republicans, including Governor Ron DeSantis (2019-2021), attempted to derail the implementation of Amendment 4 while continuing to prevent previously incarcerated people from voting.

The history of felony disenfranchisement in Florida is as much the story of what did not change (at least until very recently) as what did. The 1868 provision remained almost untouched

[16] Ryan King, "Jim Crow Is Alive and Well in the 21st Century: Felony Disenfranchisement and the Continuing Struggle to Silence the African-American Voice," *Souls: A Critical Journal of Black Politics, Culture & Society* 8, no. 2 (September 21, 2006): 7-21.

throughout much of Florida's subsequent history. But sometimes stagnation itself needs to be explained. Other Reconstruction-era policies seemed like relics of the past by the 1960s. New forms of voter suppression, such as voter ID laws and voter roll purges, look quite different from the tactics influencing elections during the twentieth century. Even a 2018 ruling by the 11th Circuit Court's about Amendment 4, which required previously incarcerated people to pay all court-ordered costs related to their conviction before voting, prompted activists to call the decision a *modern-day* poll tax; the poll tax is so far removed from contemporary memory that any new iteration must be temporally distinguished from its original form. Conversely, felony disenfranchisement rarely graces the pages of a history textbook despite being the most persistent of all Reconstruction-era policies. The subtler changes in America's racial climate and national crime discourse allowed for the continuance of felony disenfranchisement, and understanding these elusive shifts offers insight into the endurance of structural racism in the United States. It was a policy that could not be changed until activists had understood its more subtle racial implications.

Chapter 1: The Early Racialization of Felony Disenfranchisement in Florida (1865-1868)

Although Reconstruction aimed to establish the voting power of freed Black men, many Southern states worked in the late 1860s and early 1870s to do just the opposite. Fearful of a Black voting bloc, many white legislators sought to limit the franchise by any means necessary, and felony disenfranchisement became an effective though indirect method to restrict Black suffrage. Thus, examining the 1868 Florida Constitutional Convention, where the expansion of felony disenfranchisement occurred, offers valuable insights into the motivations behind this law. As this chapter will argue, the convention and the language changes made to the felony disenfranchisement provision demonstrate something very important: from 1868 onwards, felony disenfranchisement was racially motivated. Any link to criminality following the convention was a façade for this reality. This initial racial animus has undergirded efforts to uphold felony disenfranchisement since the days of Reconstruction.

In March 1867, federal legislators grouped Florida, Georgia, and Alabama in the Third Military District as part of their strategy to reunite the Union. Under the radical Republican plan for Reconstruction, former Confederate states had to ratify the 14th Amendment to guarantee Black men the right to vote, adopt new state constitutions, and bar former Confederate leaders from holding public office. For wealthy white Southerners, a politically empowered Black voting bloc spelled trouble, especially in Florida. After the Civil War, many Floridians sought to develop the state into a booming center of development and tourism. "A new country [in Florida] will be opened to [Northerners] more delightful in climate, more fertile in soil, more available to market than any State or Territory except California can present," the *San Francisco Bulletin* proclaimed.[17] But this utopian vision of a booming Florida industry required something else: a

[17] *San Francisco Bulletin* (San Francisco, CA), "The South to Gain More than the North by the War," January 4, 1865.

subservient Black working class.[18] Even the *San Francisco Bulletin* forecasted that "Negro labor will be cheap."[19] Thus, in addition to its white supremacist motivations, disenfranchising Black citizens had an economic incentive too. With the radical Republicans in Washington determined to establish equal voting rights, however, Southern legislators and Northern entrepreneurs needed furtive tactics to restrict the Black vote. So in January 1868 when a group of legislators gathered in Tallahassee to rewrite Florida's state constitution, expanding felony disenfranchisement offered an apt way to both restrict Black voting power and conceal lawmakers' true intentions.

Many territories and states had adopted felony disenfranchisement before the Civil War; it had been a continuation of policies in England that revoked civil rights upon a criminal conviction. Such penalties for crime had been around in England since medieval times, and had existed in ancient Greece and Rome before that.[20] This form of punishment was known as "civil death" and resulted in an individual losing their legal rights, including suffrage.[21] The provision, written into Florida's first constitution, stated, "The General Assembly shall have the power to exclude from…suffrage, all persons convicted of bribery, perjury, forgery, or other high crime, or misdemeanor." [22] Because felony disenfranchisement existed before Black people could legally vote, it is tempting to assume that there was no racial motivation for revoking the right to vote from convicted criminals, that it really did exist to protect the ballot box from lawbreakers. In 1838, that might have been true, especially since the language was so specific. For three decades after the establishment of felony disenfranchisement, legislators hardly changed the

[18] Ortiz, *Emancipation Betrayed*, 16.
[19] *San Francisco Bulletin* (San Francisco, CA). "The South to Gain More," January 4, 1865.
[20] Ryan King, "Jim Crow Is Alive and Well in the 21st Century," 7-21.
[21] Ibid.
[22] Allison J. Riggs, "Felony Disenfranchisement in Florida: Past, Past, Present, and Future," *Journal of Civil Rights & Economic Development* 28, no. 1 (Summer 2015): 108.

provision, despite two constitutional conventions in 1861 and 1865. The passage of the 13th, 14th, and 15th Amendments, however, motivated lawmakers to make some revisions.

Once the federal government abolished slavery and granted Black men the right to vote, the precise language of the 1838 constitution was no longer sufficient. With Reconstruction threatening to dismantle white supremacy, Florida legislators needed a vaguer and more widely applicable insurance policy to ensure that the ballot box remained white and wealthy, and that meant changing the provision that had existed undisturbed for thirty years. White fears of slave insurrections prior to the Civil War had already inserted notions of Black criminality into white Southerners' consciousness. In the minds of Florida lawmakers, restricting suffrage on the grounds of a felony conviction seemed like an effective measure to ensure that Black people who, to white Southerners, were inherently criminal, could not vote. Even before the expansion of felony disenfranchisement, Florida lawmakers had already begun to use the criminal justice system as a mechanism to control Black people. Due to the passage of Black Codes between 1865 and 1866, Black citizens suffered far greater consequences for crimes compared to their white counterparts. While a white person might be fined for a misdemeanor, a Black person could be whipped thirty-nine times.[23] A Black person could also be jailed for failing to fulfill a labor contract for a white employer or for cohabiting a home with a white woman.[24] In explaining these Black Codes, one Florida Supreme Court Justice remarked, "We have a duty to perform – the protection of our wives and children from threatened danger, and the prevention of scenes which may cost the extinction of an entire race."[25]

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[23] Joe M. Richardson, "Florida Black Codes," *Florida Historical Quarterly* 47, no. 4 (April 1969): 374.
[24] Newton, *The Invisible Empire,* 3; Richardson, "Florida Black Codes," 374.
It is worth noting that no such provision existed for a white man cohabiting, sexually assaulting, or raping a Black woman existed.
[25] Richardson, "Florida Black Codes," 386.

Despite the proliferation of Black Codes and other restrictive policies in Florida in 1865 and 1866, some white and several Black legislators remained committed to the original goal of Reconstruction. One white legislator, Daniel Richards, a Radical Republican from Illinois, did not want to see the noble aims of the Reconstruction era trampled before his eyes. In the spring of 1867, he and William Saunders, a mixed-race ex-barber from Baltimore, arrived in Florida to help re-integrate the state into the Union by drafting a new constitution. Joining them was Liberty Billings, a former commander of a Black regiment during the Civil War.[26] Together, they organized the Loyal League of America to counter the white supremacist politics unfolding in Florida. The arrival of these northern radicals in the state exacerbated already tumultuous race relations; one conservative said, "[t]he damned Republican party has put n*****s to rule us and we will not suffer it.""[27] Richards, Saunders, and Billings had the federal government on their side, though. The radical Republicans in Washington were well aware of the spread of Black Codes and white terror in the South. In March 1867, Congress passed the first Reconstruction Act with the aim of protecting Black citizens from violence and disenfranchisement as the ex-Confederacy transitioned from military districts to states of the Union.[28] With the teeth of the Reconstruction Act behind them, Richards, Saunders, and Billings began organizing a constitutional convention.

On January 20, 1868, the Florida constitutional convention assembled in Tallahassee and elected Daniel Richards as its president. Richards pledged better housing, free education, jobs, and enfranchisement for the freedmen and, with a large Black electorate behind him, these aspirations seemed within reach. Also in attendance were "18 blacks and 23 white and mulatto

[26] Jerrell H. Shofner, "The Constitution of 1868," *The Florida Historical Quarterly* 41, no. 4 (April 1963): 358.
[27] Newton, *The Invisible Empire*, 10.
[28] Holloway, "'A Chicken-Stealer Shall Lose His Vote,'" 934.

delegates" who had been elected to serve the people of Florida.[29] Because of the protections offered by the Reconstruction Act of 1867, these Black delegates had been elected fairly. Such a clear display of new Black political power enraged white people not just in Florida, but across the country. One Philadelphia writer lamented that, "the Convention appears entirely in the hands of the extremists."[30] Another journalist from Macon, Georgia called the integrated group of legislators a "mongrel body."[31] Despite the backlash, the Richards party set to work crafting a new constitution. Notably, this new constitution did not make any revisions to the 1838 felony disenfranchisement provision. In fact, according to John Wallace, a freedman who served as a page to the convention and later documented the Reconstruction era in his book, *Carpet-Bag Rule in Florida* (1888), the Richards party did not even mention felony disenfranchisement.[32] The key goal of the Radical Republican version of the 1868 Constitution was, in Richards' own words, to "prohibit all laws that are not equal and just."[33] But this Constitution was not the one that was ratified.

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[29] *Boston Journal* (Boston, MA), "Trouble in the Florida Convention New York, Jan. 30," January 30, 1868.
[30] *Public Ledger* (Philadelphia, PA), "The Florida Convention Tallahassee Jan. 21," January 22, 1868.
[31] *Macon Weekly Telegraph* (Macon, GA), "Florida Convention," January 3, 1868.
[32] John Wallace, *Carpet-Bag Rule in Florida: The Inside Workings of the Reconstruction of Civil Government in Florida After the Close of the Civil War*, (Jacksonville, FL: Da Costa Print. and Pub. House), 1888; *Journal of the Proceedings of the Constitutional Convention of the State of Florida*, 1868 Leg. (Fla. Jan. 20, 1868), 8.
There remains some uncertainty surrounding the true author of *Carpet-Bag Rule in Florida*. Wallace was an enslaved person until 1862 when he escaped to join the Union army in 1863. After the war, he returned to Tallahassee where he was appointed as a messenger of the 1868 Convention. Later on in his life, he served on the lower branch of the legislature for four years and the Senate for two. However, his portrayal of Reconstruction in Florida aligns much more with how a white Southerner might have depicted the involvement of radical republicans in Reconstruction. The book frequently criticizes the radical republicans and praises the white Southerners who usurped the 1868 Constitutional Convention. Some historians, such as James C. Clark, have raised suspicions about whether or not Wallace was the true author of *Carpet-Bag Rule in Florida*. Regardless, the book still includes several key documents that shaped Reconstruction in Florida, such as the Billings and Osborn versions of the 1868 Constitution.
James C. Clark, "John Wallace and the Writing of Reconstruction History," *The Florida Historical Quarterly* 67, no. 4 (April 1989): 409.
[33] Adam Wasserman, *A People's History of Florida, 1513-1876: How Africans, Seminoles, Women, and Lower Class Whites Shaped the Sunshine State, 4th ed. (Sarasota, FL: A. Wasserman, 2010), 528.*

A group of anti-Black delegates, known as the Osborn Faction after Thomas W. Osborn, a carpet-bagger whom Wallace described as "devoid of moral courage as of conscience," sought to undermine the work of the Radical Republicans.[34] While the Radical Republicans intended to build a coalition of white and Black voters to consolidate control of the state, moderate Republicans, with the support of Southern planters and ex-Confederates, prioritized the maintenance of a white land monopoly, which required a docile Black labor force. Moderate may seem like a strange term here; by contemporary standards, white land supremacy is considered extreme. But, in the days of Reconstruction, the ends of the political spectrum were either the radical establishment of rights for Black people or the continuance of slavery. The Osborn faction, which favored neither and instead advocated for a system that maintained white supremacy without slavery, was considered moderate. Compared to other Southern states, Florida had double the amount of public land available for individual use, which had opened up the opportunity for Black land ownership.[35] For white landowners, Black ownership would have been disastrous; they would have no one to work their fields. Thus, racial equality threatened to usurp white economic superiority in the state, the very thing that had attracted carpet-baggers like Osborn in the first place. In its first two weeks, the moderates attempted to derail the Convention. Some delegates slowed the process by not even bothering to show up.[36] On February 8, 1868, one Texas newspaper covering the events in Tallahassee forecast that "a disruption of the Convention is a fixed fact."[37] And that prediction was coming true. As the

[34] Wallace, *Carpet-Bag Rule*, 56.
[35] Ortiz, *Emancipation Betrayed*, 18.
[36] *Journal of the Proceedings of the Constitutional Convention of the State of Florida*, 1868 Leg. (Fla. Jan. 20, 1868).
[37] *Flake's Bulletin* (Galveston, TX), "From Our Evening Edition of Yesterday. Latest by Mail," February 8, 1868.

proceedings of the Convention continued, the Osborn faction grew increasingly uncooperative as the Richards party pushed for equality.

Unsatisfied with the direction of the new constitution and realizing that they had little chance of preventing the Radical Republicans from succeeding, the Osborn faction retreated to Monticello, Florida to draft a constitution of their own. "The minority party are holding secret sessions, allowing no spectators, and rapidly framing a Constitution without a quorum," one newspaper said.[38] To prevent the approval of a radical constitution, the Osborn faction needed to somehow disprove the legitimacy of the convening members, and they did so by attacking the outsider status of the Richards party. The Osborn faction denied "the eligibility of Billings, Richards, Pierce, Saunders, and Walker to seats, on the ground that the former are not citizens of the State." [39] The irony, however, is that Osborn himself and many other members of the faction had arrived to Florida around the same time as their opponents. Still, challenges to the Richards party's legitimacy as Florida residents would be the Osborn faction's key mechanism in dismantling Reconstruction efforts in the state. Meanwhile, in Tallahassee, Richards and his fellow legislators carried on with their version of the constitution despite the absence of their rivals. On February 4th, the Richards party sent a signed draft to General George Meade, the Union governor of the Third Military District who was residing in Atlanta, for approval.[40]

Just six days after retreating to Monticello, the Osborn faction returned to Tallahassee on February 10, 1868. Their determination to prevent the advances of Reconstruction surpassed any desire for the preservation of democracy; at midnight, and with the aid of then-Governor and ex-Confederate, David Walker, the Osborn Faction broke into the convention hall.[41] The moderates

[38] *Flake's Bulletin* (Galveston, TX), "From Our Evening Edition," February 8, 1868.
[39] *Flake's Bulletin* (Galveston, TX), "From Our Evening Edition," February 8, 1868.
[40] Shofner, "The Constitution of 1868," 363.
[41] Wasserman, *A People's History of Florida*, 529.

had another challenge to overcome, however. If they were to legitimize their version of the constitution, the Osborn faction required at least two radical delegates for a majority vote. The evidence surrounding the proceedings of this evening remains unclear; some historians suggest that the military "seized two of the radical delegates, dragging them out of bed and forcing them to the hall," others say that Charles M. Hamilton, a future Florida congressman, "roused two black delegates from their beds…to compel them to add their numbers to form a quorum."[42] Regardless, two Black delegates were made present at this midnight convention, but whether this presence was of their own volition is uncertain. The moderates elected Horatio Jenkins to replace Richards as president of the convention. Governor Walker then ordered the military to protect the hall as the moderates finished the proceedings of their convention. When the dumbstruck radical faction awoke the next morning, they found U.S. soldiers with bayonets stationed outside of the convention hall.

The political power of the Richards party continued to unravel. On February 15th, Richards wrote to Meade about the "illegal and revolutionary" action that was "tending to impede, if not defeat reconstruction in this State," and requested that the offending party be "arrested and removed from the capital."[43] Jenkins had also written to Meade, however, and requested that both presidents resign and the rightful one be re-elected. Richards protested, but Meade agreed. In the interim, the moderates continued in their efforts to render Richards, Saunders, Billings, and other radicals "ineligible to seats in the convention."[44] By the time that Meade arrived to Tallahassee on February 17th, many radicals had been deemed ineligible and therefore could not vote. As a result, Jenkins won the presidency in a vote of thirty-two to

[42] Wasserman, *A People's History of Florida*, 529; Weinfeld, *The Jackson County War*, 51.
[43] Wallace, *Carpet-Bag Rule in Florida*, 371.
[44] *Journal of the Proceedings of the Constitutional Convention of the State of Florida*, 1868 Leg. (Fla. Jan. 20, 1868), 4.

thirteen, setting in motion the necessary steps for the Osborn faction to adopt their version of the constitution.[45] In writing on their opposition, Richards and Billings compared the Osborn faction to “”hungry wolves around a carcass” who congregated together there as with a common purpose, and that purpose to defeat reconstruction on a republican basis in that State.”[46] On February 25th, the newly-organized convention adopted the Osborn faction’s version of the constitution. After the ratification, Harrison Reed, a moderate and the next governor of Florida, wrote to David Yulee, a former Confederate leader, that “Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature.”[47]

It was this constitution, ratified under strange, violent, and furtive circumstances, that altered the language of the felony disenfranchisement provision that had remained mostly untouched for three decades. Although felony disenfranchisement had been included in the Florida constitution in 1838, the changes made in 1868 revealed the new racial motivation for the provision. In 1838, the provision stipulated that “all persons convicted of bribery, perjury, forgery, or other high crime, or misdemeanor” would lose suffrage.[48] Conversely, the 1868 constitution stated that, “no person under guardianship…or insane shall be qualified to vote at any election; nor shall any person convicted of felony be qualified to vote at any election unless restored civil rights.”[49] These changes seem small, but they actually had large consequences. Wary of criminal disenfranchisement, Congress, under the Reconstruction Act of 1867, had deemed that only felony-class crimes could restrict suffrage. This stipulation meant that lesser crimes, such as misdemeanors, would not be disqualifying. Therefore, it seemed that the

[45] Shofner, “The Constitution of 1868,” 366.
[46] Wallace, *Carpet-Bag Rule in Florida*, 68.
[47] Wasserman, *A People’s History of Florida*, 530.
[48] Allison J. Riggs, "Felony Disenfranchisement in Florida: Past, Past, Present, and Future," 108.
[49] Fla. Const. art. XV, § 2 (1868).

moderate faction was merely updating the 1838 Constitution to meet this criterion. However, the language in the 1868 provision disenfranchised anyone convicted of a felony without specifying which crimes actually met this standard. Lawmakers determined felony classifications on a state-by-state basis, meaning that the federal government could not control what crimes were considered felonies. This vague language, then, gave legislators legal backing for disenfranchising people who had committed crimes by allowing Florida lawmakers to determine what constituted a felony. As a result, many states, including Florida, upgraded minor crimes to felonies.[50] Thus, crimes that *had* been misdemeanors, like petit larceny, suddenly became felonies and grounds for disenfranchisement.[51]

Felony disenfranchisement was not the only racially motivated provision added to the 1868 constitution. The language of these additional discriminatory laws was similar to the felony disenfranchisement clause in that no racial animus is evident, even today. For example, under Article XV: Suffrage and Eligibility, which also contains the felony disenfranchisement provision, section six ordered that "no person not duly registered according to law shall be allowed to vote." [52] On paper, that may seem to be a valid proviso, but the vagueness of the language allowed for a litany of interpretations. Because the section did not specify the process for registration, whites could manipulate the process to inhibit Black voting. Under this section, Florida's first poll tax, later instituted during the 1885 Florida constitutional convention, was considered a legal step in the registration process.[53] Furthermore, Article XVII, section twenty-two, banned "any person from being eligible" for public office "unless he had been nine years a

[50] Holloway, "'A Chicken-Stealer Shall Lose His Vote,'" 941.
[51] Ibid.
[52] Fla. Const. art. XV, § 6 (1868).
[53] Ortiz, *Emancipation Betrayed,* 45.

citizen of the United States, two years a citizen of the State of Florida, and a registered voter."[54] Again, citizenship requirements for public office seem reasonable, and are still in place for the highest levels of government. But for Black leaders, who had only recently gained citizenship status, and radical Republicans, who had just moved to the state of Florida, such policies removed them as political contenders. In Wallace's words, section twenty-two "was done to shut out…colored men…and other leading lights of the colored race in the State."[55] These racially discriminatory policies, including felony disenfranchisement, intended to prevent Black citizens from exercising their voting power. The vague language of these provisions allowed white lawmakers to dodge scrutiny from Washington.

The rise of extralegal violence and the carceral state in Florida further impeded Black voting power, but these enablers of voter suppression were only made possible by the legal infrastructure put in place by the 1868 constitutional convention. As time wore on, these bureaucratic maneuverings, bolstered by violence, intimidation, and injustice, would grow even more shrewd and effective. In the case of felony disenfranchisement, its debilitating effects on Black voting power and bodily freedom appeared almost immediately. Incarceration rates of Black citizens increased dramatically over the decade following the convention, and many other states like Mississippi, Alabama, and Georgia began to adopt Florida's successful disfranchising provision. While felony disenfranchisement may not have begun as a racially motivated provision in 1838, the Osborn faction seized it as an opportunity to disenfranchise Black citizens for life as well as resolve their labor crisis in the form of convict leasing.

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[54] Wallace, *Carpet-Bag Rule in Florida*, 64; Fla. Const. art. XVII, § 22 (1868).
[55] Wallace, *Carpet-Bag Rule in Florida*, 64.

Chapter 2: The Expansion of Felony Disenfranchisement and its Consequences (1868-1923)

During the 1880 election in Ocala, Florida, a Black man named Cuffie Washington went to the polls to cast his ballot. Once at the polling station, however, Washington was stopped. A group of white officials claimed that he could not vote because he had been convicted of a minor crime: stealing three oranges.[56] They turned Washington away before he could cast his ballot. In the late Reconstruction era, experiences like Washington's were common. With felony disenfranchisement already on the books in Florida, polling station officials could easily claim that a Black man had committed a crime and have him escorted away. Arrests for petty larceny actually increased around election time. One Black man who had been turned away from the polls because of a petty theft charge remarked, "It was a pretty general thing to convict colored men in [Ocala] just before an election; they had more cases about election time than at any other time."[57] The disenfranchisement clause, however, only seemed to apply to Black men trying to vote. Another white man named A.J. Harrell, who had admitted to "shooting a n****r," also went to the polls to vote in the 1880 election. He cast his ballot without a problem.[58] This racial double standard highlights the power of the felony disenfranchisement provision; under the guise of protecting the ballot box from the criminal voters, white officials could disfranchise Black men while simultaneously ignoring white crimes, especially when those crimes were directed against the Black communities of Florida.

Killings, like the one that Harrell described, happened frequently in Florida, both as a way to reinforce a racial hierarchy and to discourage Black citizens from exercising their political rights. Following the 1868 constitutional convention, Florida witnessed a harrowing rise

[56] Ortiz, *Emancipation Betrayed*, 33; Holloway, "A Chicken-Stealer Shall Lose His Vote," 931.
[57] Holloway, "A Chicken-Stealer Shall Lose His Vote," 932.
[58] Ortiz, *Emancipation Betrayed*, 33.

of extralegal violence, voter intimidation, and mass policing. In May 1868, just a few months after the conclusion of the convention mayhem, the Ku Klux Klan and the Young Men's Democratic Club, two white supremacist organizations, made their first appearance in the state, bringing terror with them.[59] Both of these groups attacked Black communities and patrolled polling locations as methods of intimidation. Yet, despite this recent rise of violence, the federal government ended official military Reconstruction in Florida on July 4, 1868. Without federal protections, the safety of Black citizens was put in extreme jeopardy. In the following ten days, white vigilantes killed five freedmen.[60] In September 1868, white posses murdered three freedmen and between October 12th and November 30th, they killed at least five more Black men.[61] Such frequent terrorism sent a clear message to Black citizens: stay in line or get killed.

Despite the risks, many Black citizens went to the polls anyway. Since Emancipation, a vast network of active Black citizens had developed in order to fight for political power, and Florida had a particularly rich history of Black resistance and organizing. Several Black organizations, such as the Knights of Pythias, offered protection from lynchings and other forms of violence, encouraged Black Floridians of all socioeconomic backgrounds to vote, and arranged burial proceedings for their fellow community members. All of these efforts were designed to restore civil rights to Black citizens in the absence of energetic governmental intervention.

In terms of the criminal justice system, however, there was little that these Black freedom organizations could do. When white violence found its way to the polls, the criminal justice

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[59] Newton, *The Invisible Empire*, 12. The founder of the Young Men's Democratic Club, Joseph John Williams, a planter and nine-term state legislator, already had a hand in the maintenance of white supremacy in Florida. Before the Civil War, he had hired vigilante groups to patrol Black movement in Leon County and, after the war, he played a significant role in establishing Florida's first Black codes.
[60] Newton, *The Invisible Empire*, 12.
[61] Newton, *The Invisible Empire*, 12.

system typically followed. In the late Reconstruction era, law enforcement was often in cahoots with organizations like the Ku Klux Klan, so police presence at the polls upheld white vigilante action rather than offering protection to Black targets. In addition to defending white violence, law enforcement could also prevent Black citizens from voting on the spot; because of Florida's felony disenfranchisement provision, Black voters risked being arrested for attempting to vote if they had committed minor, nonviolent crimes. The story of Cuffie Washington and the three stolen oranges was just one example of these types of arrests, but others occurred as well. In Washington's same county during the 1880 election, Black voters were arrested at the polls for "having stolen a gold button, a case of oranges, hogs, oats, six fish (worth twelve cents), and a cowhide."[62] Due to their arrests, none of these African-Americans cast a ballot on that day, but many of the white men who had spent Election Day terrorizing Black voters likely did.

Black citizens were not only arrested at the polls, however. Law enforcement often arrested and convicted Black Floridians for minor charges such as petty larceny, vagrancy, or failing to adhere to racial etiquette. For example, Florida, like many other Southern states, had a vagrancy law which stated, "every able-bodied person who has no visible means of living, and shall not be employed at some labor to support himself or herself, or shall be leading an idle, immoral or profligate course of life, shall be deemed a vagrant, and may be arrested."[63] The law punished vagrants with incarceration, fines, or twelve months of labor, and the children of arrested vagrants could be hired out as apprentices.[64] Many of the Sunshine State's Black codes, like the vagrancy law, had been passed in 1865 as Florida legislators attempted to replace slavery but, after 1868, with the revised felony disenfranchisement provision, these codes had a new and

[62] Holloway, "A Chicken-Stealer Shall Lose His Vote," 931.
[63] Fla. Const. art. XVI, § 1 (1865).
[64] Richardson, "Florida Black Codes," 371-2.

destructive power. Minor, nonviolent, and largely subjective crimes could disenfranchise hundreds of Black Floridians. Due to these waves of arrests, jails and prisons began to fill up with Black citizens after the 1868 convention. According to the Brennan Center for Justice, by the 1870s-1880s, 95% of people imprisoned in Florida were Black.[65] The motivations of law enforcement to arrest Black citizens extended beyond disenfranchisement alone. Not only did a predominantly Black prison population maintain white supremacy in the state's elections, but it also provided a much-needed cheap labor force in the absence of slave labor.[66] Therefore, the incentive for arresting Black people had never been greater; by incarcerating Black citizens, white Floridians could preserve their political, social, and economic control in the state.

Plenty of justifications in intellectual and pseudoscientific circles began to emerge across the country in order to explain the increase of Black incarceration rates, many of them reliant on crime statistics taken from the 1890 Census. Still, several newspapers began to report a dramatic increase of crime, striking fear into Americans. As Khalil Gibran Muhammad has argued, the advent of crime statistics from the 1890 Census invited theorizing about the causes of "vice," or moral depravity. Statistics undergirded this analysis; if the numbers showed an increase in crime, then it simply had to be true. As one writer for the *New York Observer* put it, "the growth of crime is proved from the statistics."[67] This reliance on statistics allowed intellectuals to exploit the racial disparities of the criminal justice system to "prove" the link between race and crime. To these scholars, the numbers showed a striking increase specifically in Black crime. Conspicuously absent in these explanations, however, was consideration of the factors that motivated law enforcement to incarcerate Black citizens, such as felony disenfranchisement and

[65] "History of Florida's Felony Disenfranchisement Provision." Brennan Center for Justice. Last modified March 2006.
[66] Oshinsky, *Worse than Slavery*, 56.
[67] Thomas A. Hoyt, "The Increase of Crime," *New York Observer and Chronicle* (New York, NY), January 17, 1895.

convict leasing, or of the laws that specifically targeted Black people, like anti-vagrancy policies. Instead, white intellectuals hypothesized that crime occurred on account of race. These conclusions, supported by seemingly indisputable "scientific" evidence, embedded the association between Blackness and criminality in American national consciousness.

It may seem strange that Washington lost his right to vote for stealing three oranges while A.J. Harrell could still vote after committing murder. However, this inconsistency was the reality for voters in the state. Florida's 1868 felony disenfranchisement provision was not self-executing, meaning that legislators had to determine which crimes would qualify for disenfranchisement independent of the constitution. As a result, Florida lawmakers could more severely apply the disenfranchisement clause to crimes that Black citizens committed at higher rates than their white counterparts. One of the most frequently used crimes was petty larceny, which disenfranchised all of the Black men turned away from the polls during the 1880 election. Larceny had become a common crime of some Black citizens who, with little governmental support after the abolition of slavery, had to steal to survive.[68] Lawmakers across the South knew this, and used this vulnerability to target Black citizens. In 1876 Mississippi, for example, legislators passed the "Pig Law," which revised the definition of "grand larceny" to include "the theft of a farm animal or any property valued at ten dollars or more."[69] Stealing a pig, therefore, could land a Mississippian in state prison for five years and dramatically increased the state's convict labor force. In Florida, the issue of petty larceny and disenfranchisement rose through the state's court system. In an 1881 Florida Supreme Court case, *State v. Buckman*, a man named Richard Jordan was convicted of petty theft and had to pay a fine of ten cents plus court costs,

[68] Oshinsky, *Worse Than Slavery*, 18.
[69] Oshinsky, *Worse Than Slavery*, 40.

which he did.[70] Election officials, however, prevented Jordan from voting on the grounds that he was a felon. The Florida Supreme Court agreed, saying, "A conviction of petty larceny disqualifies a person from voting in this State."[71] The court's verdict would allow white officials to legally disenfranchise hundreds of Black Floridians.

This relatively widespread disenfranchisement all occurred under a constitution of the Reconstruction era. Despite the discriminatory impact of the 1868 felony disenfranchisement clause and other provisions of that constitution, the Reconstruction-era document had made some strides towards social and political reform, with programs like free education and a centralized government.[72] The usurpers of the 1868 constitutional convention had been mostly Northern men who were driven by the potential of striking it rich in the South. Doing so required a subservient Black laboring class. Their motivations fit with a Northern brand of racism: as they saw it, Black citizens should have some civil rights and protections, but not at the cost of these northerners' economic interests.[73] Southern whites had mostly been shut out from the 1868 constitutional convention but, by 1885, most Northern interventionists had lost interest in Florida politics. The time had come, these whites believed, to redeem Florida to its Southern glory, and that meant doing away with any remnant of northern interference. The changes that would come to the Florida state constitution would make it still more difficult for Black voters to cast their ballots.

On June 9, 1885, Florida politicians convened again in Tallahassee to ratify a new state constitution. The representation at this convention looked different than that of 1868. For one, Southern Democrats outnumbered Republicans at eighty-two to twenty-three, largely due to the

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[70] *State v. Buckman*, 267 18 Fla. (11th Cir. 1881).
[71] Holloway, "'A Chicken-Stealer Shall Lose His Vote,'" 947.
[72] Edward C. Williamson, "The Constitutional Convention of 1885," *The Florida Historical Quarterly* 91, no. 2 (October 1962): 116.
[73] Williamson, "The Constitutional Convention of 1885," 116.

voter suppression that had occurred in the preceding years and a general rejection of the party of the North.[74] Nearly all of the Democrats had been born in the South and many of them had served in the Confederate army.[75] Only seven of the delegates were Black, compared to eighteen at the last convention. Pushing through a Democratic agenda, which consisted of reducing governmental power and passing a poll tax, would not be difficult. The delegates elected Judge A.E. Maxwell as the temporary chairman of the convention; he would go on to manage the convention's administrative and executive departments. By 1885, Maxwell had become well situated within Florida politics. Before the Civil War, he had served in the Florida legislature and state senate, filled the role of both secretary of state and attorney general, and represented Florida in Congress.[76] While in the House of Representatives, Maxwell had delivered a speech in defense of slavery as Congress wrestled with the integration of Kansas into the Union. "Northern belief holds [slavery] to be an evil and a curse; while in the South it is regarded as no offense against either the laws of God or humanity," Maxwell had said on that occasion.[77] Ultimately, Maxwell concluded that "the institution is a positive good."[78] With Reconstruction officially over in Florida, Maxwell returned to the political scene to relieve the state "from the evils of the present system."[79]

The 1885 constitutional convention established one of the most effective voter suppression tactics in Florida: the poll tax. The poll tax required voters to pay a fee, that many Black and white voters could not afford in order to cast their ballots. When the 1885 poll tax proved to be very effective, legislators expanded it four years later, requiring voters to "pay their

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[74] Williamson, "The Constitutional Convention of 1885," 118.
[75] Williamson, "The Constitutional Convention of 1885," 119.
[76] *Pensacola Daily News* (Pensacola, FL). "Augustus E. Maxwell Died Last Night." May 6, 1903.
[77] A.E. Maxwell, "Slavery--Kansas--Parties Thereon." Speech, House of Representatives, Washington, D.C., May 1, 1856.
[78] Maxwell, "Slavery," Speech, House of Representatives, Washington, D.C., May 1, 1856.
[79] *Journal of the Proceedings of the Constitutional Convention of the State of Florida*, 1885 Leg. (Fla. June 9, 1885).

tax for two years immediately prior to elections."[80] In 1888, over 26,000 people voted for Republicans; by 1892, that number had dropped below 5,000. Although the poll tax and felony disenfranchisement may seem unconnected, this new Black code allowed for Democrats to consolidate their political power in Florida. Without Republican or Black representation in Congress, legislators could uphold the systems that favored them, including Black codes circa 1865, felony disenfranchisement, and convict leasing. With power secured at the top, Black citizens could easily fall victim to a racist criminal justice system, which permitted violence, maintained white supremacy, and disenfranchised its Black population.

The effectiveness of felony disenfranchisement in revoking Black suffrage prompted other states in the Deep South to adopt similar provisions. By 1869, twenty-nine states had adopted or expanded their felony disenfranchisement laws, some with more explicitly racially discriminatory intent than others. For example, during Mississippi's 1890 constitutional convention, legislators, like those in Florida, determined crime classifications based on which race was more likely to commit the offense. Legislators thought Black citizens committed furtive offense at higher rates than white citizens, so they classified such crimes as felonies. White citizens were more likely to commit "robust crimes," such as murder, and these offenses were not classified as a felonies. In other words, a Black man could steal a loaf of bread and lose his voting rights, but a white man could kill someone and keep his.[81] Similarly, during its 1901 constitutional convention, Alabama ensured that the language surrounding felony disenfranchisement remained vague. Although legislators did list some crimes that would result in a loss of suffrage, such as "treason, murder, arson [or] embezzlement," the provision also

[80] Jerrell H. Shofner, "Custom, Law, and History: The Enduring Influence of Florida's 'Black Code,'" *Florida Historical Quarterly* 55, no. 3 (January 1977): 287.
[81] Ryan King, "Jim Crow Is Alive and Well in the 21st Century," 9.

stipulated that "any infamous crime or crime involving moral turpitude" could disqualify a potential voter.[82] Lawmakers did not define moral turpitude until 2017, over one hundred years after the provision had been in place.[83] "And what is it that we want to do?" John B. Knox, the president of the convention, asked his delegates in his opening remarks. "Why, it is, within the limits imposed by the Federal Constitution, to establish white supremacy in this State."[84] For a century, the 1901 convention had fulfilled this goal.

Why did so many states establish felony disenfranchisement when other voter suppression tactics had proven their effectiveness? The Southern cocktail of poll taxes, literacy tests, grandfather clauses, and white-only primaries had already stripped Black citizens of their voting power. However, part of what made felony disenfranchisement so successful in disenfranchising Black people was the way in which it amplified the discriminatory effects of the criminal justice system. After the abolition of slavery, the South had lost its very cheap labor source and, for the economy to endure, this labor source had to be replaced. But soon enough, white businessmen and policemen found a solution in convict leasing, the process which allowed wealthy Southern planters, industrialists, and magnates to rent inmate workers from prisons. Convict leasing, a system that was brutal, inhumane, and deadly, proliferated across the South after the Civil War. When powerful white businessmen enslaved Black people, they viewed it as an investment. They had an incentive to keep enslaved people alive. This was not the case with convict leasing. White businessmen could lease convicts cheaply and easily get a replacement if one died due to the work conditions. Florida had one of the most lethal systems in the South. At the time, Florida's main industries revolved around harvesting natural resources, particularly in

[82] Ala. Const. art. VIII, § 182 (1901).
[83] Anderson, *One Person, No Vote*, 128.
[84] *Journal of the Proceedings of the Constitutional Convention of the State of Alabama*, 1901 Leg. (Ala. May 21, 1901), 9.

phosphate mines and turpentine camps, and the construction of railroads. This labor was both dangerous and exhausting; it was difficult to find free labor willing to do it cheaply. Convict leasing offered an ideal labor source. One convict camp, led by a man named J.C. Powell, routinely tortured, starved, and overworked its laborers to keep them on schedule. While laying down track for the St. Johns, Lake Eustis, and Gulf Railroad Company, the workers had to make due with "no food at all" in the humid marshes of north Florida, and, as Powell put it, were "driven to live as the wild beasts."[85] Of the seventy-two convicts who arrived, only twenty-seven returned alive, the rest being worked to the point of starvation, disease, and death.

The demand for convict labor encouraged the criminal justice system to arrest and incarcerate Black citizens for minor crimes, such as vagrancy or larceny. Although white citizens were also arrested and put to work in convict camps, Black laborers far outnumbered white ones. The Black codes already in place allowed for law enforcement to legally target African-Americans. One Ocala-based turpentine operator, Charles V. Miller, made an arrangement with the deputy sheriff, E.V. Hutson. Miller told Hutson that "he needed a gang of men for his crop of turpentine" and agreed to pay five dollars for every convict that Hutson delivered. As one journalist reported, "they made up a list of some eighty negroes known to both as good husky fellows, capable of a fair day's work."[86] The sheriff proceeded to arrest all of them within "three weeks on various petty charges – gambling, disorderly conduct, assault and the like."[87] They went to work on Miller's turpentine camp. Labor arrangements between white businessmen and law enforcement became increasingly common, and incarceration rates skyrocketed. In Florida

[85] Oshinsky, *Worse Than Slavery*, 56.
[86] Richard Barry, "Slavery in the South To-Day: A Revelation of Appalling Conditions in Florida and Other States, Which Make Possible the Actual Enslavement of Whites and Blacks Under Trust Domination," *The Cosmopolitan*, March 1907.
[87] Barry, "Slavery in the South To-Day," *The Cosmopolitan*, March 1907.

in 1884, there were thirteen white and eighty-seven Black prisoners.[88] Just fifteen years later, the number of white convicts had only increased to fifty, while the number of Black convicts had increased to 282.[89] By 1910, Florida had the highest incarceration rate in the South, and it would be one of the last states to abolish convict leasing, in 1923.

Meanwhile, as a result of further increases in incarceration rates, crime discourse nationwide was becoming even more racialized. Because more Black people were arrested to fill convict labor camps, white intellectuals argued that Black people were inherently criminal, that their race made them more likely to commit crimes. Stereotypes, like the "black brute" became popular in academia and in media. For instance, George T. Winston, an anti-Black writer and president of the University of North Carolina, used this stereotype to warn against the dangers of Black crime, especially against white women. In an address to the American Academy of Political and Social Science in 1901, Winston described "the black brute" as "lurking in the dark, a monstrous beast, crazed with lust" who committed "crimes too hideous to describe…against the helpless women and children of the white race."[90] The archetype appeared in media for popular consumption, such as the film *The Birth of a Nation* (1915), as well.[91] Ultimately, misinterpreted crime statistics and unfounded stereotypes created a self-perpetuating cycle to uphold white supremacy in the criminal justice system: white law enforcement arrested more

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[88] *The Atlanta Constitution* (Atlanta, GA). "Crime in Florida: Comparison of the Present with Figures of Fifteen Years Ago." October 21, 1899.
[89] *The Atlanta Constitution* (Atlanta, GA). "Crime in Florida." October 21, 1899.
[90] George T. Winston, "The Relation of the Whites to the Negroes," *The Annals of the American Academy of Political and Social Science,* 18 (July 1901): 109.
[91] *The Birth of a Nation*, directed by D.W. Griffith, depicted Black men as unruly, violent, and sexually depraved. The climax of the movie occurs when Gus, a Black man (played by a white actor in blackface), proposes to marry the white heroine. Fearful of his advances, she flees, and Gus pursues her. When Gus refuses to leave her alone, she jumps off a cliff to her death. "Justice" is served when a group of Klansmen avenge the girl's death by lynching Gus. The film was massively influential and had widespread implications, including sparking the revival of the KKK eight months after its premiere. One newspaper writer explained that "the dramatic incidents gave the audience a definite feeling of Negro depravity and white virtue."
William Rawlings, *The Second Coming of the Invisible Empire: The Ku Klux Klan of the 1920s*, (Macon, GA: Mercer University Press, 2016), 50.

Black citizens create a convict labor force, white intellectuals and the media claimed high incarceration rates were the result of inherent Black criminality, law enforcement believed Black citizens were more dangerous, and so more Black citizens were arrested. Such was the case with the men on Miller's turpentine farm, and with several other convict labor camps in the South. The disproportionate incarceration rates of Black people further racialized the impact of suppressive tactics, like felony disenfranchisement. By painting Black people as inherently criminal, white society fabricated an excuse for second-class citizenship, in which Black citizens were undeserving of economic assistance, fair trials, and voting in elections.

With convict leasing rampant in Florida, felony disenfranchisement was like the final twist of the knife. Even if an incarcerated person managed to survive the state's convict leasing system, he would never be a full citizen again because Florida law disenfranchised for life people who had been incarcerated, even if only briefly. Although legislators may not have constructed felony disenfranchisement and the convict leasing system in tandem, each directly impacted the other in profound ways. These effects – such as mass disenfranchisement, the rebirth of slavery, and the killing of Black people – would only become more apparent in the twentieth century. Although disproportionately high incarceration rates of Black citizens in the South were the result of white structural injustice and discriminatory arrests, social scientists, legislators, and media outlets began to use this disparity to strengthen the association between criminality and Blackness. Although felony disenfranchisement was not as racially explicit as other Reconstruction-era policies, the discriminatory nature of the criminal justice system ensured that the policy would have a racially disparate impact. For this reason, and as the next century will show, advocates of the provision could argue that felony disenfranchisement was not a racist policy because *all* previously incarcerated people lost their right to vote. But because the

criminal justice system unfairly targeted Black people, this seemingly non-racial law did in fact have a racial impact.

Chapter 3: New World: Same Old Felony Disenfranchisement (1870-2016)

Republican Claude R. Kirk Jr. wanted to be the 36th governor of Florida. In 1966, he was running an intense campaign against Democrat Robert King High, the mayor of Miami. The campaign unfolded against the backdrop of what seemed to be chaos: riots in the cities, Civil Rights, Women's Liberation, Gay Liberation, Hippies, Yippies, a war in Vietnam, and rampant crime in the streets. Kirk's platform promised a return to law and order in the state of Florida, and he advocated the use of capital punishment as a crime deterrent. That year, Florida had fifty-two people on death row, and the then Democratic governor had refused to sign any death warrants during his administration. Kirk needed to distinguish himself from his Democratic opponents as a law and order candidate, unafraid to be tough on crime. During his campaign, he visited the Florida State Penitentiary in Raiford, a small town in the middle of northern Florida, to meet the people on death row. "If I'm elected," Kirk said, shaking hands with those awaiting execution, "I may have to sign your death warrant."[92] Later, when a *New York Times* reporter asked Kirk about the Raiford incident, he defended himself by saying, "Well, I was the first candidate to care enough about them to shake their hands even though they couldn't vote."[93] And Kirk would keep it that way. In the first year of his governorship, as a revision of the Florida constitution was underway, Kirk approved the continuance of felony disenfranchisement.

Following the renewal of felony disenfranchisement during the 1968 Constitutional Revision Commission (CRC), the provision did not face new challenges until 1974 when legislators attempted to lessen the lifetime voting ban on previously convicted people. The battle to remove felony disenfranchisement took off from there; the last quarter of the twentieth century

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[92] Michael Mello, *Deathwork: Defending the Condemned* (Minneapolis, MN: University of Minnesota Press, 2002), 25.
[93] Robert Sherrill, "A Political Happening Named Claude Kirk," *New York Times*, November 26, 1967.

and the beginning of the twenty-first century became the most dynamic period of the law's history. It underwent several revisions, lawsuits, and significant media attention, until it was finally put on the ballot in 2018. Part of the newfound attention given to felony disenfranchisement emerged because of the rise of mass incarceration in the same time period. As with convict leasing, mass incarceration disproportionately targeted Black citizens over white ones and on a much larger scale. The War on Drugs, which officially began in the 1980s, profoundly contributed to mass incarceration, increasing the national prison population from 187,914 in 1968 to 1,613,740 in 2009. In Florida, the number increased from 40,897 people in jails and prisons in 1983 to 153,405 in 2015.[94] More incarcerated people meant more citizens without voting rights, further weakening democracy in the state of Florida. As was the original intention of felony disenfranchisement, Black voters still found themselves to be the target of this disqualifying measure. Unlike convict leasing, though, mass incarceration occurred in the aftermath of the Civil Rights movement, so issues regarding racial discrimination played a larger role in politics. Thus, since 1974, more contention surrounded felony disenfranchisement than ever before.

It may appear jarring, then, to not only jump several decades forward but also to begin with Claude Kirk, who made very few changes to the provision. In fact, the 1968 constitution hardly even altered the language of the original felony disenfranchisement provision that had been approved during the tumultuous convention of 1868. But the second year of Claude Kirk's governorship was the first time that the Florida constitution had been redrafted since 1885. Despite this long-awaited moment of modernization, felony disenfranchisement stubbornly

[94] Henrichson, Christian, Eital Schattner-Elmaleh, Jacob Kang-Brown, Oliver Hinds, and James Wallace-Lee. "Incarceration Trends in Florida." In *Incarceration in Local Jails and State Prisons*, by Vera Institute of Justice. Last modified 2019. https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-florida.pdf.

remained on the books. Ultimately, the story of felony disenfranchisement in Florida is one of persistence. Long stretches of time passed with few political changes being made until the devastating effects of mass incarceration demanded that something be done to address the injustice. For a long time, though, legislators and activists did not consider felony disenfranchisement an injustice. While other Reconstruction-era policies in Florida were slowly eradicated, legislators renewed the practice of felony disenfranchisement in 1968 with little opposition. So, before leaping into this period of dynamic change, it is worth dwelling for a moment on shifts in discourse about voting and crime, Claude Kirk, and the 1968 CRC to examine not how felony disenfranchisement changed over time but rather, in the 100 years since the 1868 convention, how it did not. Indeed, it was this persistence that has made the contemporary battle to abolish felony disenfranchisement so arduous.

Changes to Voting and Crime Discourse

The passage of the Fifteenth Amendment in 1870 broadened the category of who got to vote, stating, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."[95] However, the effectiveness of the Fifteenth Amendment in the decades following its passage was limited. After all, the Black codes of the Reconstruction era had effectively disenfranchised Black men, who had been made citizens by the Fourteenth Amendment. Women, too, were considered citizens, and yet they did not gain suffrage until 1920 with the passage of the Nineteenth Amendment. Previously incarcerated people had also completed their "previous condition of servitude," and yet they also could not vote.[96] While the Fifteenth Amendment had established that voting was, in fact, a right, the people responsible for its implementation across

[95] U.S. Const. amend. XV § 1 (1870).
[96] U.S. Const. amend. XV § 1 (1870).

the country often understood voting as a *privilege* dependent upon the individual's status as a *legal person*, or, as Barbara Welke defines it, the extent to which an individual controlled the "right to one's person, one's body, and one's labor."[97] Enslaved people, for example, did not have the right to their bodies or their labor. In the eyes of the law, they were not people and therefore were prohibited from voting. Because the law often determined bodily rights, the right to vote on these laws was an important indicator of legal personhood; exclusion from voting also meant exclusion from determining the laws that governed one's rights as a person. The right to vote, then, is so significant because it allows access to determining all other rights. But, throughout American history, discourse about the vote has raised the question of which people are capable of exercising these rights and, in the eyes of many white, able men, marginalized groups, including people of color, women, and incarcerated people, were incapable. The vote, they said, was not a universal right.

Over time, access to the vote slowly expanded to include a greater variety of people, but movements for expanding suffrage often faced opposition. "I have contended all along that whenever the right to the vote was conferred on women, it would be the opening of "Pandora's Box,"" said Frank Clark Jr., a Florida congressman in 1918, "out of which will come ills to the southern people which will plague our children for many generations yet unborn."[98] The women's suffrage movement in Florida encountered significant resistance from the state, and many opponents of women's suffrage linked the issue to the voting rights of Black people. Clark, for example, claimed that the language of the women's suffrage movement would "enflame the passions of the negro to nurture race antagonism and hate, and eventually [will] plunge our fair

[97] Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (Cambridge, UK: Cambridge University Press, 2010) 3.
[98] P.H. McGowan, "Frank Clark Fears It Will Bring Race War." *Tampa Morning Tribune* (Tampa, FL), March 7, 1918.

section into race wars."[99] To Clark and others like him, voting was not a natural right and by allowing others to vote, white men risked losing political and social supremacy over the state. This risk became greater if Black men and women could vote. White Florida women, however, circumnavigated these fears by excluding Black women from their appeals for voting rights. In fact, many Southern white women working towards suffrage resented the fact that Black men could vote but white women could not; they believed their whiteness should have deemed them worthy enough to create law. "How can I, with the blood of heroes in my heart, and with the free and independent spirit they bequeathed me, quietly submit to representation by the alien and the negro?" asked Ella C. Chamberlain in 1895, the woman who began the crusade for suffrage in Florida.[100] Because opposition to women's suffrage grew out of fears that women voting would change the political landscape – one anti-suffrage pamphlet claimed that women voting "will place Government under petticoat rule" – white women had to convince white men that their vote was necessary and that it would not profoundly alter the political landscape.[101] Doing so required white women to use their whiteness as a tool.

White women took the argument that their moral purity as women and mothers offered an important opportunity to enhance the moral quality of the state's laws. Some men agreed, articulating that white women were morally superior than men. "Go to the saloons," said A.C. Hamblin of Hillsborough county, Florida, "and see which sex will be found there."[102] White women's perceived purity allowed for them to claim worthiness to vote, a degree of worthiness that would not have been possible had they included Black women, who white society

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[99] P.H. McGowan, "Frank Clark Fears," *Tampa Morning Tribune* (Tampa, FL), March 7, 1918.
[100] A. Elizabeth Taylor, "The Woman Suffrage Movement in Florida," *The Florida Historical Quarterly* 36, no. 1 (July 1957): 43
[101] Jewish Women's Archive, comp. *Pamphlet distributed by the National Association Opposed to Woman Suffrage*. https://jwa.org/media/pamphlet-distributed-by-national-association-opposed-to-woman-suffrage.
[102] Taylor, "The Woman Suffrage Movement in Florida," 57.

stereotyped as sexually deviant and criminal, in their fight for suffrage. Eventually, as women's suffrage gained more traction, white men began to appeal to white women to vote against the interests of marginalized groups and in favor of white supremacy. "Surely no white man *nor white woman* [emphasis added] wants to occupy a lower sphere in our political life than a negro washerwoman," said one white man in Fort Pierce in 1920.[103] "Refuse to register and vote, and you so place yourself, you cannot get away from that fact." It was not until the federal ratification of the Nineteenth Amendment that women in Florida could vote, as state efforts for women's suffrage had failed. The passage of the Nineteenth Amendment, which occurred while Black men were still denied the franchise because of Jim Crow legislation, signified that whiteness meant worthiness with one exception: incarceration.

If voting was a question of worthiness, then, incarcerated people stood at the bottom of the social hierarchy. Sympathy for incarcerated people was and continues to be slim; American society understands crime largely as a personal failure, even though several instances throughout history, such as the convict leasing system, have shown that an individual's incarceration can also be a societal failure. Felony disenfranchisement was a unique voter suppression tool because it attacked both white and Black people, and it was quite possible that the provision was initially created to prevent both Black people and poor whites from casting their ballots. However, ideas about crime had begun to shift in the mid-twentieth century to become more implicitly racialized. As felony disenfranchisement persisted from 1968 on, it became clear that it was easier for previously incarcerated white people to regain their voting rights than it was for Black people to do the same. This contemporary discrimination could operate because of the adoption of the implicitly racist language that grew out of the postwar period, especially within crime

[103] Ortiz, *Emancipation Betrayed*, 195.

discourse. Such rhetoric allowed for politicians to use the same language of worthiness in determining whose voting rights were restored and whose were not.

Crime discourse in the 1960s looked quite different than it had in the first half of the century. Although ideas about race and crime had become deeply intertwined decades earlier, such explicitly racist language was no longer politically permissible. Politicians knew that they could appeal to white voters by drawing on deep-rooted fears of Blackness, but to say so overtly would lead to allegations of racism. This white fear was especially true in relation to the Black Power movement; white Americans understood Black militancy as a harmful threat to the social order rather than an act of protest against the structural racism and violence directed at Black people. Additionally, racial unrest in the second half of President Lyndon B. Johnson's administration convinced legislators that crime, not the lack of economic opportunity or upward mobility, was the real issue and that social reform did nothing but reward perpetrators. But these claims were not entirely true. Although several riots did happen in the summer of 1967, overall, "violent crime had steadily declined after prohibition and remained stable throughout most of the 1960s."[104] Still, "sensationalized media coverage of urban unrest in cities like Watts, Detroit, and Newark" furthered the association between Blackness and criminality, all while suggesting that crime had reached outrageous proportions.[105] While the riots did result in the deaths of several people and widespread damage in the cities, national crime rates were not as high as media coverage might have implied.

Widespread fears of lawlessness presented an opportunity for politicians to win the votes of concerned white people, but to do so, they had to adopt race neutral language when speaking about crime to fit the post-Civil Rights racial climate. One politician who excelled at capitalizing

[104] Elizabeth Hinton, "Creating Crime," *Journal of Urban History* 41, no. 5 (2015): 808-809.
[105] Hinton, "Creating Crime," 808-809.

on these fears while avoiding explicitly racist language was Richard Nixon. "We look at America, we see cities enveloped in smoke and flame. We hear sirens in the night," he said in his acceptance speech at the 1968 Republican National Convention in Miami, Florida. He went on to describe the shouting in the streets, the violence at home and abroad, and the quiet suffering of the decent Americans who worked and paid their taxes. In his words, America, the "nation with the greatest tradition in the rule of law" was "plagued by lawlessness."[106] To avoid accusations of racism, politicians like Nixon and, later, Ronald Reagan, used racist dog whistles – coded phrases that provoked white fears of Blackness – in order to gain support from white voters. Some of these phrases included "urban unrest," "street crime," and "law and order." These phrases offered a way to racialize crime without having to say Black or white, and it was effective. As Michelle Alexander notes, "by 1968, 81 percent of those responding to [a] Gallup poll agreed with the statement that "law and order has broken down in this country," and the majority blamed "Negroes who started riots" and "Communists.""[107]

The 1968 Constitutional Revision Commission (1966-1974)

Against this backdrop, the election of Governor Claude Kirk and the 1968 CRC unfolded. Compared to other Southern states, Florida does not have the same reputation for racism, and in studies of the Civil Rights Movement, historians tend to focus on other states like Mississippi, Alabama, and Georgia. However, Florida was not free of racial violence, segregation, nor flagrant displays of white supremacy. St. Augustine, for example, was actually a key battleground during the Civil Rights Movement and contributed to the landmark passage of the

[106] Richard Nixon, "Richard Nixon 1968 Acceptance Speech," Speech presented at Republican National Convention, Miami Beach, FL, August 8, 1968. C-SPAN. https://www.c-span.org/video/?4022-2/richard-nixon-1968-acceptance-speech.
[107] Alexander, *The New Jim Crow*, 58-9.

Civil Rights Act of 1964.[108] When describing the events in Florida in a letter to President Johnson, Martin Luther King Jr. wrote, "we have witnessed raw and rampant violence even beyond much of what we have experienced in Alabama and Mississippi."[109] Furthermore, Florida also witnessed the same kind of racial unrest as characterized several northern cities in the late 1960s. A 1967 racial protest in Tampa was included alongside similar incidents in cities like Atlanta, Newark, and Detroit in the "Profiles of Disorder" section of *The National Advisory Commission of Civil Disorders*. [110] The contentious racial climate prompted many of Florida's white conservative voters to grow even more fearful of racial unrest, crime, and social change. Although the turbulence in 1960s Florida may appear unrelated to felony disenfranchisement, the heightened fear of crime at this time ultimately decreased the consideration given to incarcerated people. This reluctance to support incarcerated people partially explains the persistence of felony disenfranchisement. For many voters and politicians, high crime rates and widespread discontent endangered the fabric of society. Those who committed crimes, therefore, had to be severely

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[108] The 400th anniversary of the founding of St. Augustin prompted many civil rights organizers to call attention to the four centuries of "bigotry and hate and indignities suffered at the hands of fellow men," especially after all of the violent attacks on Black citizens.[108] Martin Luther King Jr. even travelled to Florida to protest the segregationist policies in the city. The Monson Motor Lodge had become a focal point of the protests, and even garnered national attention when a group of protestors jumped into a whites-only swimming pool at the lodge, into which the owner poured muriatic acid. Photographs of the incident circulated the nation and, the next day, the Senate passed the Civil Rights Act of 1964.
Southern Christian Leadership Conference. Pamphlet, "400 Years of Bigotry and Hate," 1964. Box 15, Folder 24. Newsweek Atlanta Bureau Records. Stuart A. Rose Manuscript, Archive, and Rare Book Library, Atlanta, GA; Cyril M. Canright, Letter to Hugh Downs, May 4, 1964, Box 300, Folder 7, Southern Christian Leadership Council Records, Stuart A. Rose Manuscript, Archive, and Rare Book Library, Atlanta, GA.

[109] Martin Luther King, Jr., Letter to Lyndon B. Johnson, 1964, Box 15, Folders 23, 24, Newsweek Atlanta Bureau Records, Stuart A. Rose Manuscript, Archive, and Rare Book Library, Atlanta, GA.

[110] The Tampa riot broke out after a white police officer shot Martin Chambers, a 19-year-old Black man, who had been accused of robbing a photo supply warehouse. As Chambers fled, the officer ordered him to stop, but Chambers refused, continuing to run alongside a chain-link fence. Calvert then pointed his .38 revolver and fired. Chambers collapsed with his hands over his head, giving the impression to the Black residents following Calver tthat "a white police officer had shot a Negro youth who…was trying to surrender."[110] Chambers died at the hospital shortly after. Over 500 people gathered in Tampa to protest the death of Chambers and police eventually lost control. The protestors burned and looting buildings, fired guns, and toppled powers lines. The Tampa incident was one in a long series of racial protests that broke out across the country that summer.
The National Advisory Commission on Civil Disorders, Washington, D.C.: United States Government Printing Office, 1968, 43-45.

punished to prevent a descent into chaos. Floridians wanted a leader who would crack down on crime and would show no leniency to those who had wronged society. For the first time since Reconstruction a Republican, Claude Kirk, won the state's gubernatorial campaign.

Kirk's unprecedented rise to the governorship rocked Florida politics. Despite the state's history of conservativism, there had not been a Republican governor in Florida since the days of Reconstruction. Still, Kirk won with a lead of over 150,000 votes, partially by capitalizing on racial tensions in the state.[111] The *New York Times* even remarked that Kirk "was swept into office on a wave of feeling against racial moderation and President Johnson's Great Society."[112] Racial animus would remain at the center of Kirk's administration and, in fact, would grow worse over time as unrest gripped the country in the late 1960s. Kirk began his administration by launching Florida's anti-crime campaign in 1967. Politicians described crime in the state of Florida as a war and Kirk called himself its "general."[113] To manage crime in the state, Kirk hired an organization of private detectives, whose tactics, according to one State senator, were comparable to "gestapo police-state tactics."[114] Further racial protests in the state and across the country only emboldened Kirk to ramp up his already strict anti-crime measures. In 1968, Kirk hosted a national conference about crime and delinquency to discuss "organized crime, drug abuse, civil disorders and juvenile delinquency."[115] That same year, he also managed to bring the Republican National Convention to Miami, where presidential candidate Richard Nixon would

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[111] In many ways, Kirk got lucky: his law and order campaign came at a time of political tumult, a drastic increase in Florida's population shattered the old order which had kept Republicans out of office, the reapportionment of Florida counties better aligned the state with the "one person, one vote" rule, and there was a split in the Democratic party during the election.

[112] Martin Waldron, "Kirk, Republican, Is Elected Governor of Florida," *New York Times* (New York, NY), November 9, 1966.

[113] *The Sun* (Baltimore, MD), "Kirk Defends 'Crime War': Florida Cabinet Says It May Support Unique Campaign," March 23, 1967.

[114] *The Sun* (Baltimore, MD), "Anti-Crime Plan Decried in Florida: Private Detectives' Use Said to Smack of 'Gestapo Tactics,'" January 22, 1967.

[115] *Palm Beach Post* (West Palm Beach, FL). "Conference on Crime Scheduled." July 14, 1968.

deliver a speech about the rise of lawlessness in the United States. In 1969, Kirk founded the Florida Bureau of Law Enforcement.[116] Ultimately, Kirk's law and order style of governing had created an environment where any leniency towards incarcerated people – including restoring the right to vote – would be unconscionable and, because many Floridians perceived crime as a major threat to the social order, felony disenfranchisement received little attention, except during the state's constitutional revision commission.

In this watershed decade, the state constitution was also undergoing revisions for the first time in eighty-three years. Since 1885, the last time that legislators had approved a new constitution, Florida had experienced some significant changes. For one, the population had grown from 391,422 in 1890 to 4,951,560 in 1960.[117] This growth also brought diverse demographic changes and the expansion of cities like Miami. The old constitution did not account for these population shifts, which allowed legislators in the less populated northern counties to concentrate power, while more populous southern counties were not proportionately represented.[118] Additionally, the new space program in Cape Canaveral had pushed the state away from its Reconstruction past towards a technologically advanced future. The 1885 constitution with its outdated laws, like banning interracial marriages, in short, made the state look bad. Many lawmakers and state residents believed the time had come for Florida to modernize, and so in 1966, legislators began to do just that. Chesterfield Smith, a Bartow attorney, was appointed as the chair of the Constitutional Revision Commission (CRC) and divided the commission into eight committees: Education and Welfare; Executive; Human

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[116] Edmund F. Kallina Jr., *Claude Kirk and the Politics of Confrontation*, (Gainesville, FL: University Press of Florida, 1993), 3

[117] Mary E. Adkins, "The Same River Twice: A Brief History of How the 1968 Florida Constitution Came to Be and What it Has Become," *Florida Coastal Law Review* 18, no. 5 (2016): 8.

[118] Adkins, "The Same River Twice," 10-11.

Rights; Judicial; Legislative; Local Government; State Finance; and Suffrage and Elections.[119] Each committee worked separately for months, considering and debating questions around the new constitution.

The Suffrage and Elections committee debated felony disenfranchisement in February 1966. Democratic representative Richard Pettigrew, a former lawyer and a member of the committee raised the issue of felony disenfranchisement, suggesting that "Section 4 be deleted and the following inserted: "The Legislature *may* [emphasis added] by law establish disqualifications for voting for mental incompetency or convication [*sic*] of a felony.""[120] Debate ensued over the use of the word "felony," with Warren Goodrich, another committee member suggesting "commitment to a jail or penal institution" or "crime" as substitutions.[121] However, once the vote came for Pettigrew's suggestions, "it failed of adoption" and "the Committee adopted Section 4 of Article VI with no further amendments," with few changes being made to the 1885 version.[122] He suggested that the Legislature determine which crimes led to disqualification, but "his proposal was defeated in committee."[123] In June 1966, committee members completed the draft of the constitution and it was published across newspapers throughout the state. After a series of public hearings, the committee members met again in November 1966. Commissioners "proposed nearly two hundred amendments to their draft,"

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[119] Adkins, "The Same River Twice," 15.
[120] *Commission Minutes Committee Minutes and Proposals January 1966 - June 1966: Hearings Before the Florida Constitutional Revision Commission*, 1966 Leg. (Fla. Feb. 2, 1966), 89; Richard Pettrigrew, Interview by Denise Stobbie, University of Florida Digital Collections. Last modified December 16, 1986.
[121] *Commission Minutes Committee Minutes and Proposals January 1966 - June 1966: Hearings Before the Florida Constitutional Revision Commission*, 1966 Leg. (Fla. Feb. 2, 1966), 89.
[122] *Commission Minutes Committee Minutes and Proposals January 1966 - June 1966: Hearings Before the Florida Constitutional Revision Commission*, 1966 Leg. (Fla. Feb. 2, 1966), 89.
[123] Darryl Paulson and Martin Dyckman, "Fix Florida's Felon Vote," *Tampa Bay Times* (Tampa, FL), January 1, 2017.

none of which, however, changed the felony disenfranchisement clause of the old constitution.[124] On July 4, 1968, the constitution was finally completed.

For Florida's Black population, little had changed since 1885, as "Negroes had no hand in [the constitution's] formulation, and no Negroes sat in the legislature."[125] In 1967, Sam Jones, the director of the Florida Voter League, threatened court action against the drafters of the new constitution for refusing Black representation. "Negro citizens of Florida find it intolerable," Jones told Kirk, "to confront the prospect of a future existence under a state constitution written solely by the white race without Negro minority representation."[126] Still, the constitution revision process moved forward. The next step required Floridians to either approve or oppose the new amendments and revisions to the constitution. Although the NAACP urged "the state's 300,000 Negro voters to oppose the new constitution," it passed during the 1968 November election.[127] Noticeably absent, however, from the criticisms of the new constitution was felony disenfranchisement, whose racial significance few activists had yet understood. Other initiatives, like prohibiting racial discrimination and segregated schools, were – not surprisingly – deemed more important items of the Civil Rights agenda.[128] Only the "War on Drugs" of the ensuing decades would bring more attention to the issue of felony disenfranchisement.

Although Florida legislators sought to modernize the Florida constitution, the exclusion of Black representation from the commission and the continuation of some Reconstruction policies, like felony disenfranchisement, prevented the state from fully shedding its history of voter suppression. The final version of the amendment declared that, "No person convicted of a

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[124] Adkins, "The Same River Twice," 16.
[125] Charles F. Hesser, "New Constitution Under Fire," *The Atlanta Constitution* (Atlanta, GA), September 22, 1968.
[126] *The Tampa Tribune* (Tampa, FL). "Negro Challenges Revision Session." July 11, 1967.
[127] Hesser, "New Constitution Under Fire," *The Atlanta Constitution* (Atlanta, GA), September 22, 1968.
[128] Adkins, "The Same River Twice," 19; Kirk, Claude R., Jr. Memorandum, "Florida Proposed Revised Constitution: Article VI: Suffrage and Eligibility," n.d. Series 923, Carton 23, File Folder 2. Florida Constitution Revision Commission Record. State Archives of Florida, Tallahassee, FL.

felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability."[129] This amendment would remain on the books and unrevised until 2007. Legislators decided to uphold the felony disenfranchisement policy without being able to articulate an "independent rationale for reenacting the provision."[130] While the criminal justice system had been racially discriminatory since the days of convict leasing, the lack of overtly racist language in the wording of felony disenfranchisement shielded the provision from criticism. The heightened fear of crime, the inflammatory rhetoric of law and order politicians like Kirk, and the lack of attention brought to felony disenfranchisement during the commission allowed for the provision to persist a century after its first adoption. With the War on Drugs on the horizon, the failure to repeal felony disenfranchisement at this time would deeply impact the voting power of Black communities. Because Black men were incarcerated at a strikingly disproportionate rate by comparison with whites, felony disenfranchisement became more powerful than ever before in restricting access to the ballot box. Finally, activists and legislators began to pay more attention to this provision, but the attitudes that had preserved it – such as widespread fear of crime, beliefs in inherent Black criminality, race neutral language, and an unwillingness to rehabilitate incarcerated people – would throw obstacles in the path of abolition.

The Persistence of Felony Disenfranchisement (1974-2018)

Beginning in 1974, more and more challenges to felony disenfranchisement in Florida began to appear on the political stage. As time wore on, these challenges became more aggressive, sometimes even garnering national attention. Although these efforts failed to fully

[129] Fla. Const. art. VI, § 4 (1968).
[130] "History of Florida's Felony Disenfranchisement Provision." Brennan Center for Justice. Last modified March 2006; Fla. Const. art. VI, § 4 (1968).

repeal felony disenfranchisement, they did begin the slow and arduous process of chipping away at the provision, whose effects had grown more powerful due to the rise of mass incarceration. The primary cause of this increase were drug charges, which skyrocketed in the 1980s because of the War on Drugs.[131] Today, more people are "behind bars for a drug offense than the number of people who were in prison or jail or any crime in 1980."[132] Between 1983 and 2018, the Florida prison population increased by 265%.[133] Policies like mandatory minimum sentences for drug possession only exacerbated the problem, leaving more people, a disproportionate number of them Black, behind bars for longer periods of time. But, over time, more activists and legislators began to fight felony disenfranchisement until the majority of Florida voters decided to undo the 180-year-old provision in 2018. Even then, the hurdles remained aplenty.

Richard "Dick" Pettigrew, the white Florida Democrat who had challenged felony disenfranchisement during the CRC had not given up on prison reform just yet. Pettigrew had grown up in Jacksonville, FL during the Great Depression. He attended the University of Florida, where he became involved with campus politics, and then later went to law school. After graduating, he had considered returning to Jacksonville, but, as he said during a 2001 interview, "It was not a very progressive city, and my views had become quite different than those I was raised with."[134] During college, Pettigrew had realized that he "was very strongly in favor of civil rights for blacks," and so returning to Jacksonville, a "kind of hopeless-segregation-town at

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[131] As Michelle Alexander notes, many of these drug convictions were the result of innocent people giving into a plea bargain for leniency. Although there were certainly people who *were* carrying and selling drugs in the 1980s, 2-5% of incarcerated people are innocent. Alexander explains, "While those numbers may sound small (and probably are underestimates), they translate into thousands of innocent people who are locked up, some of whom will die in prison." (Alexander, *The New Jim Crow*, 111).

[132] The Sentencing Project. "Criminal Justice Facts." The Sentencing Project. https://www.sentencingproject.org/criminal-justice-facts/.

[133] Henrichson, "Incarceration Trends in Florida." In *Incarceration in Local Jails and State Prisons*, by Vera Institute of Justice. Last modified 2019. https://www.vera.org/downloads/pdfdownloads/state-incarceration-trendsflorida.pdf.

[134] Richard "Dick" Allen Pettigrew, "Interview with Richard 'Dick' Allen Pettigrew." By Julian Pleasants. University of Florida Digital Collections. Last modified May 23, 2001, 8.

the time" seemed undesirable.[135] Instead, Pettigrew headed to Miami to launch his law career and, eventually, his political career. In 1963, he became a member of the Florida House of Representatives and then Speaker of the House between 1971 and 1972. During the 1970s, many Floridians felt that the state had a "prison overcrowding problem" and so Pettigrew became more involved in prison reform legislation.[136] He wanted to introduce more "prisoner education [and] rehabilitation efforts" to try to "improve the chance of their making it on the outside."[137] As a result, Pettigrew spearheaded a prison reform bill known as the Correctional Reform Act. The Legislature stated the Act would put "an emphasis upon:

> (1) the decentralization of correctional facilities by the implementation of regional facilities, (2) vocational and educational training of offenders, (3) use of local jails for minor offenses, (4) use of alternatives to institutionalization, (5) improved pretrial and presentence investigation, and (6) improved diagnostic programs.[138]

In addition to addressing issues within Florida's prison system, the Act also sought to lessen the lifelong restriction of voting for citizens with a felony conviction. The Act ruled that, "the civil rights of a person convicted shall be suspended until he is discharged from parole or released from the custody of the department without parole, at which time such civil rights are automatically reinstated."[139] This new restoration process would return voting rights to previously incarcerated people without the need for a lengthy bureaucratic process.

However, the Correctional Reform Act was not easily enacted, as it faced controversy both in the Legislature and throughout the state. Prevost Coulter, a white writer for the *Pensacola* News, found the Act's emphasis on rehabilitation to be misguided. "The theory of

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[135] Richard "Dick" Allen Pettigrew, "Interview with Richard 'Dick' Allen Pettigrew." By Julian Pleasants. University of Florida Digital Collections. Last modified May 23, 2001, 8.
[136] *The Tampa Tribune* (Tampa, FL). "Two Senate Committees Study Prison Problems." April 27, 1973.
[137] Richard "Dick" Allen Pettigrew, "Interview with Richard 'Dick' Allen Pettigrew." By Julian Pleasants. University of Florida Digital Collections. Last modified May 23, 2001, 38.
[138] Joint Legislative Management Committee of the Florida Legislature, comp. *Summary of General Legislation 1974*. Tallahassee, FL, 1974, 190.
[139] Fla. Stat. § 944.292 (1974).

social idealists is that all motives and reasons for a crime can be cured," he wrote in 1973, "despite the fact that crime itself is a disease and science never has been able to cure many diseases of the body or cancers of society."[140] But Pettigrew and his supporters defended the bill. "Some people may think that a strong concern for treatment and rehabilitation of offenders is being soft on criminals," stated the *Journal of the House of Representatives*, a record of the proceedings for the 1974 legislative session. "But we must all recognize that sooner or later most of these individuals will be released back into society, and unless we have made a serious effort to truly change the course of their lives while we have them in custody, we are doing all of society a disservice."[141] In 1974, the bill passed in the Florida legislature. While some Floridians continued to protest the Act's rehabilitative measures, Democratic Governor Reubin Askew, who had defeated Kirk in the 1970 election, took issue with the provision that would automatically restore voting rights to people who had been incarcerated. Askew believed that automatic restoration infringed on his executive powers as governor, and so he appealed to the Florida Supreme Court. In 1975, the Court agreed, writing in an advisory letter to Askew that, "The Florida Correctional Reform Act is a clear infringement upon the constitutional power of the governor to restore civil rights."[142] Pettigrew's newest attempt to ease felony disenfranchisement in the state failed.

Although Askew did challenge the legislature's decision, he was not necessarily opposed to easing the voting restoration process. In 1975, he and his Cabinet established the Rules of Executive Clemency, which created the Board of Executive Clemency, to handle the return of

[140] Prevost Coulter, "Prison Reform Act Poses Danger." *The Pensacola News* (Pensacola, FL), September 12, 1973.
[141] *Journal of the House of Representatives*, H.R. 1974 (Fla. Nov. 19, 1974), 10.
[142] *Palm Beach Post* (West Palm Beach, FL). "Legislative Power to Restore Rights Is Ruled Illegal." January 9, 1975.

voting rights to previously incarcerated people.[143] Under these rules, "certain categories of executive clemency cases would be eligible for automatic restoration of civil rights."[144] Between 1975 and 1991, provided that the previously incarcerated person applied for restoration and could prove his or her eligibility, voting rights could be restored for the first time in the state of Florida.[145] But the system was far from perfect. In many ways, the restoration process proved cumbersome because it put the onus of demonstrating eligibility on the previously incarcerated person. The Florida legislature's initial proposal to restore voting rights would have made the process far easier, and might have ended the matter once and for all. Although Governor Askew's method streamlined the process, it did not do so sustainably, which allowed for Republican lawmakers to make the steps towards restoration more difficult later on. Also important to mention is the absence of Black representatives in shaping these decisions; during the legislative session between 1974 and 1976, not a single Black person was in the Florida State Senate or in the governor's cabinet and there were no Black judges on the Florida Supreme Court.[146]

Throughout the 1990s and 2000s, lawmakers put more obstacles in the path of restoration. In 1991, the state added a mandatory hearing, requiring a previously incarcerated person to appear in front of the Board of Executive Clemency to appeal for their voting rights. Near the end of the decade, the list of crimes of which voting rights could be restored through the hearing process was expanded to include 200 felony convictions.[147] However, during his administration between 1999 and 2007, Florida Governor Jeb Bush dramatically shortened that

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[143] Riggs, "Felony Disenfranchisement in Florida," 109.
[144] Riggs, "Felony Disenfranchisement in Florida," 109.
[145] Riggs, "Felony Disenfranchisement in Florida," 109.
[146] *The Florida Senate Handbook 1974-76*. 1974. https://www.flsenate.gov/UserContent/Publications/SenateHandbooks/pdf/74-76_Senate_Handbook.pdf
[147] Riggs, "Felony Disenfranchisement in Florida," 109.

list, making it even harder for previously incarcerated people – including those who committed nonviolent crimes – to gain access to the ballot box. Meanwhile, between 1980 and 1999, incarceration rates in Florida more than tripled.[148] The growing prison population also meant the expansion of the carceral system; in that same period, twenty-nine new major state prisons had been built.[149] Furthermore, as a result of new sentencing guidelines passed in 1995 during the "tough-on-crime" era, "the vast majority of [Florida] offenders released from prison serve over 85 percent of their sentence" prior to release.[150] "It's very humbling for a human being to pass judgment on others," Bush said at a clemency hearing in 2006, "I worry and I wonder if I get it right."[151] But Bush often based his restoration decisions on subjective questions of morality. For instance, if an individual committed a crime involving alcohol abuse, Bush "liked to see several years of complete sobriety before he would restore the person's rights."[152] A spokesperson for Bush claimed that, while drawing on the rhetoric of safety and law and order popular in the 1960s, the policy was so stringent because "he supports vigorous enforcement policies to protect the right to vote nationwide."[153] For Bush, felony disenfranchisement was a means to protect the integrity of the ballot box, but there was no evidence suggesting that allowing incarcerated people to vote threatened this integrity.[154]

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[148] The Sentencing Project, "Mass Incarceration: State-by-State Data." The Sentencing Project. https://www.sentencingproject.org/the-facts/#map?dataset-option=SIR.
[149] "Major Institutions in Florida's State Prison System." Map. Esri. https://www.arcgis.com/apps/MapJournal/index.html?appid=04d3bc9892744344bff30929edf1cd81.
[150] Florida Legislature. *An Examination of Florida's Prison Population Trends*. By Felicity Rose, Colby Dawley, Yamanda Wright, and Len Engel. Community Resources for Justice, 2017, 54.
[151] Pema Levy, "How Jeb Bush Enlisted in Florida's War on Black Voters," *Mother Jones*, October 27, 2015. https://www.motherjones.com/politics/2015/10/jeb-bush-florida-felon-voting-rights-clemency/.
[152] Levy, "How Jeb Bush Enlisted in Florida's War on Black Voters," *Mother Jones*, October 27, 2015. https://www.motherjones.com/politics/2015/10/jeb-bush-florida-felon-voting-rights-clemency/.
[153] Levy, "How Jeb Bush Enlisted in Florida's War on Black Voters," *Mother Jones*, October 27, 2015. https://www.motherjones.com/politics/2015/10/jeb-bush-florida-felon-voting-rights-clemency/.
[154] Ryan King, "Jim Crow Is Alive and Well in the 21st Century," 7-21.

Because of the growing prison population as a result of the War on Drugs, more clemency hearings needed to take place, but the process that Bush and his predecessors had designed was extremely inefficient. For one, the Board of Executive Clemency was made up of the governor of Florida and three of their cabinet members. The makeup of this board made it difficult for it to meet regularly. Then, with thousands of clemency applications piling up, an individual hearing for each set of voting rights was simply unfeasible. As a group of state auditors discovered in early 2006, "the backlog of clemency applications since 2001 has almost doubled to more than 13,000."[155] The buildup caused a painstakingly slow restoration process, in which "more than 12,000 people…have waited more than a year and a half or more for word on their applications."[156] By 2000, the issue of felony disenfranchisement in Florida had gained national attention and the state would have to answer to the provision's greatest challenge yet. This newfound attention was partially influenced by the alarming rise of incarceration rates due to the tough-on-crime polices of the 1980s and 1990s and a greater awareness of the racial implications of the criminal justice system, but also because of the closeness of the 2000 presidential election. Although the first major court case against felony disenfranchisement would be filed a couple of months before the election debacle, the acute importance of a few extra votes in the swing state was not lost among opponents of the provision. Interestingly enough, just a few extra votes in Florida would later award Jeb Bush's brother, George W. Bush, the presidency.

On September 21, 2000, the Brennan Center for Justice filed a class action lawsuit representing over 600,000 Floridians who had lost their voting rights due to a felony

[155] Hansen Sinclair, "Bush Loosens Clemency Rules," *Westside Gazette* (Fort Lauderdale, FL), March 23, 2006.
[156] Sinclair, "Bush Loosens Clemency Rules," *Westside Gazette* (Fort Lauderdale, FL), March 23, 2006.

conviction.[157] "The permanent disenfranchisement of felons in Florida was initially adopted to discriminate against African-American voters and continues to have a discriminatory impact," the Center's preliminary statement read.[158] The Center found that, in 1998, 15% of the Black population in Florida was disenfranchised because of a felony conviction. For a swing state like Florida, those votes could count decisively in both local and national elections, such as the upcoming 2000 presidential election. As a result, the lawsuit, *Johnson v. Bush*, had the potential to bring sweeping changes to both the state's electoral landscape as well as national elections. "The case is about democracy, not crime," said Nancy Northup, the lead attorney for the case. "A lot of people violate criminal laws, but who gets convicted of a felony is based on the prosecutor's discretion and numerous other factors. Voting rights should not turn on these factors."[159] *Johnson v. Bush* unfolded over the next five years. The Brennan Center was not the only organization urging Bush to abolish felony disenfranchisement; other public officials, including two Republican state senators, urged a push to end the ban as well.[160] In 2004, as *Johnson v. Bush* continued and during George Bush's campaign for re-election, a scandal further embroiled felony disenfranchisement in controversy. Jeb Bush's secretary of state, Glenda Hood, "ordered the state's 67 local election supervisors to begin purging "ineligible" voters from a list of 48,000 felons she had sent them."[161] She requested that "the purge list be kept secret," and it did not become public until a court ordered her to release it.[162] After the release of the list, the *Miami Herald* discovered that "Hood's list contained names of mostly black men; there were 61

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[157] Brennan Center for Justice. "Johnson v. Bush." Brennan Center for Justice. Last modified November 14, 2005. https://www.brennancenter.org/our-work/court-cases/johnson-v-bush.
[158] Complaint, Johnson v. Bush, 214 F. Supp. 2d 1333 (S.D. Fla. 2002)
[159] *U.S. Newswire* (Washington, D.C.). "Florida Law Denying Vote to Ex-Felons Faces Critical Court Date." February 12, 2002.
[160] Deborah Goldberg, Letter to the editor, *New York Times* (New York, NY), February 14, 2005.
[161] Ann Louise Bardach, "Civil Rights: How Florida Republicans Keep Blacks From Voting," *Los Angeles Times* (Los Angeles, CA), September 26, 2004.
[162] Bardach, "Civil Rights" *Los Angeles Times* (Los Angeles, CA), September 26, 2004.

Latinos. And 2,100 names on the list had received executive clemency."[163] After the list became public, Bush abandoned the purge, but he did not abandon felony disenfranchisement.[164]

Despite the Brennan Center's evidence of the racial discrimination of felony disenfranchisement in the state, Bush did not budge, and the U.S. Court of Appeals for the 11th Circuit upheld Bush's decision. On April 11, 2005, the 11th Circuit upheld the felony disenfranchisement provision on the grounds that it was not racially discriminatory.[165] The Brennan Center disagreed; although the law was not explicitly racist, its effects disproportionately disenfranchised Black Floridians. For example, the Brennan Center demonstrated that "of the approximately 710,000 Florida citizens disenfranchised…nearly 30% or 211,000 are African-American. Florida's population is approximately 15% African-American."[166] The Center also cited the low rates of restoration through the clemency process. In 1997, "only 1,400 people" regained voting rights and "fewer than 2,500 ex-felons a year over the last decade" were granted clemency.[167] Because of the evidence, the Center attempted to appeal the 11th Circuit's decision to the U.S. Supreme Court, filing a petition for writ of certiorari – a process to seek a judicial review from a higher court – for the case. The League of Women Voters and a group of law enforcement officers both seconded the petition. Despite the petitioning, the Supreme Court declined to hear the case. "The Court has not only missed an opportunity to right a great historic injustice," said Catherine Weiss, an associate counsel for the Brennan Center, "it has shut the courthouse door in the face of hundreds of thousands of disenfranchised citizens."[168] Felony disenfranchisement lived to see another day.

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[163] Bardach, "Civil Rights," *Los Angeles Times* (Los Angeles, CA), September 26, 2004.
[164] Pema Levy, "How Jeb Bush Enlisted in Florida's War on Black Voters," *Mother Jones*, October 27, 2015. https://www.motherjones.com/politics/2015/10/jeb-bush-florida-felon-voting-rights-clemency/.
[165] *Johnson v. Bush*, 214 F. Supp. 2d 1333 (11th Cir. Apr. 11, 2005).
[166] Complaint, *Johnson v. Bush*, 214 F. Supp. 2d 1333 (S.D. Fla. 2002), 23.
[167] Complaint, *Johnson v. Bush*, 214 F. Supp. 2d 1333 (S.D. Fla. 2002), 24.
[168] Courtenay Strickland, "Supreme Court Turns Down Historic Voting Rights Case." *Westside Gazette* (Fort

The 21st century battle over felony disenfranchisement was not over yet. In 2007, Charlie Crist succeeded Bush as the 44th Governor of Florida and had promised to streamline the voter restoration process for previously incarcerated people during his campaign. At the time, Crist was a Republican, but later, in 2012, he became a Democrat. Crist and two of his three cabinet members decided that "no affirmative action or petitioning would be required of" the people "convicted of non-violent offenses."[169] Thus, rather than having to appear for a hearing, individuals would presumably have their rights restored automatically. However, the changes did not occur so smoothly. These individuals still required approval from the Clemency Board, which meant a slew of paperwork that still delayed the restoration process. Although the process had not been made fully automatic, it still made a difference. In 2008, Crist's office reported that the state had "restored voting rights to 115,232 people with felony convictions since the state revised its clemency procedure."[170] At the time, though, 950,000 people were disenfranchised because of a felony conviction, so those whose rights were restored in 2008 only made up about 12% of the disenfranchised population.[171] Despite the shortcomings, Crist's changes were certainly a stride towards lessening the restrictions of felony disenfranchisement. However, without complete abolition, his modifications to the clemency process could easily be undone, and just a few years later, Republican Governor Rick Scott reversed Crist's revisions.

Once elected in 2011, Scott made the clemency process much more difficult. "It is important that this form of clemency be granted in a deliberate, thoughtful manner," Scott said in announcing the change, "that prioritizes public safety and creates incentives to avoid criminal

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Lauderdale, FL), November 17, 2005.
[169] Riggs, "Felony Disenfranchisement in Florida," 110.
[170] Kahlil Williams, "FL: Still Much Work to Be Done," Brennan Center for Justice, Last modified June 21, 2008. https://www.brennancenter.org/our-work/analysis-opinion/fl-still-much-work-be-done.
[171] Williams, "FL: Still Much Work to Be Done," Brennan Center for Justice, Last modified June 21, 2008. https://www.brennancenter.org/our-work/analysis-opinion/fl-still-much-work-be-done.

activity."[172] Scott's motivation was ostensibly race neutral; however, by suggesting that allowing previously incarcerated individuals to vote would threaten "public safety," Scott drew from the rhetorical tradition of politicians like Kirk who had used fear-mongering and subtle nods to Black criminality to disenfranchise thousands. In March of that year, the first meeting of the Board of Executive Clemency passed a series of rules that further lengthened the voting rights restoration process. For example, Scott required those convicted of serious felonies to wait seven years and to undergo a full investigation by the Board before being restored their rights.[173] Individuals who were convicted of less serious felonies had to wait five years, and if either had their applications rejected, they had to wait two more years before reapplying.[174] "This is about fundamental principles," said Pam Bondi, Scott's Attorney General, in justifying the decision. "I believe if you are convicted of a felony that there should be an appropriate waiting time before you have your rights restored and I firmly believe you should have to ask to have your rights restored."[175] Although Scott and his colleagues claimed that their decisions served the interests of public safety, studies in Florida have discovered that "ex-felons who have their rights restored have a 20 percent lower recidivism rate than those who don't."[176] Still, Scott carried on with these revisions, making the restoration process extremely slow and challenging. Just one year after Scott made these revisions, Florida had the highest number of citizens disenfranchised because of a felony conviction in the country, and the numbers would only continue to increase

[172] Ledyard King, "Voting by Felons Latest Front in War Over Ballot Access," *USA Today*, October 1, 2012.
[173] Riggs, "Felony Disenfranchisement in Florida," 110.
[174] Riggs, "Felony Disenfranchisement in Florida," 110.
[175] *Scott, Cabinet End Automatic Felon Rights Restoration* (Tallahassee, FL), March 10, 2011.
[176] Levy, "How Jeb Bush Enlisted in Florida's War on Black Voters," *Mother Jones*, October 27, 2015. https://www.motherjones.com/politics/2015/10/jeb-bush-florida-felon-voting-rights-clemency/.

during Scott's administration.[177] By 2014, one quarter of the six million disenfranchised people in the country lived in Florida.[178]

These felony disenfranchisement laws specifically inhibited the voting rights of Black Floridians, disqualifying 23% of the entire Black population the state. It may be tempting to presume that the felony disenfranchisement provision was not racially discriminatory because, numerically, the white prison population exceeded the Black prison population. However, to look at these numbers alone ignores the disproportionate overrepresentation of Black people in prison. In 2017, Black Floridians made up just 17% of the state's population, but accounted for 47% of the prison population.[179] Comparatively, white Floridians made up 54% of the state's population and 40% of the prison population.[180] This disproportion is partially due to the fact that Black defendants typically receive convictions and longer sentences more often than white defendants who commit the same crimes. For example, in Pinellas County, Black people "charged with felony drug possession received 93 percent more time than whites."[181] Disparate statistics like these are boundless, but they all demonstrate the same thing: Black Floridians are overrepresented in prisons and, as a result, are underrepresented at the polls.

Furthermore, Scott's lengthy restoration process did not protect previously incarcerated Black people from racial discrimination. For example, the hearing process – when it did occur, which was not very often – allowed room for racial biases to take hold because there were no measures to prevent them. As Scott remarked during a hearing in September 2015, "This a board

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[177] Tonya Weathersbee, "The Vote Is Used as More Punishment," *Florida Times Union* (Jacksonville, FL), July 26, 2012.
[178] Amy Sherman, "Voting Rights Activist Says One-Quarter of Disenfranchised Felons in U.S. Live in Florida," *Tampa Bay Times* (Tampa, FL), January 23, 2014.
[179] Henrichson, "Incarceration Trends in Florida." In *Incarceration in Local Jails and State Prisons*, by Vera Institute of Justice. Last modified 2019. https://www.vera.org/downloads/pdfdownloads/state-incarceration-trendsflorida.pdf.
[180] Henrichson, "Incarceration Trends in Florida." In *Incarceration in Local Jails and State Prisons*, by Vera Institute of Justice. Last modified 2019. https://www.vera.org/downloads/pdfdownloads/state-incarceration-trendsflorida.pdf.
[181] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017.

of clemency, okay. There is no law we're following…so we get to make our decisions based on our own beliefs."[182] Scott's clemency board included three members of his cabinet, all of whom were white, and himself. Previously incarcerated individuals were required to travel to Tallahassee to appear before the board, where they had ten minutes to fight for their right to vote. However, because the criterion for restoration lacked a set of guidelines, Board members could make their decisions based on questions regarding the previously incarcerated person's personal life. For instance, Jimmy Patronis, the Chief Financial Officer of Florida who sat on Scott's Board, often asked questions that appeared irrelevant to the question of voting rights. Patronis asked Erwin Jones, a Black man, how many children he had and "how many different mothers to those children?"[183] Patronis asked another man seeking clemency "if he went to church."[184] The restoration experience was quite different for a white man who, in 2010, appeared before the clemency board after being convicted of casting an illegal ballot. "Actually, I voted for you," the man told Scott, who then promptly restored the man's rights.[185] There were five other similar cases brought before the board, in which a convicted person was prevented from voting because they had illegally cast a ballot, but all were denied. Four out of five of the defendants were Black.[186]

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[182] Editorial Board, "Gov. Rick Scott's Clemency Process Should Be Criminal," *Pensacola News Journal* (Pensacola, FL), September 15, 2018. https://www.pnj.com/story/opinion/2018/09/15/governor-rick-scotts-clemency-process should-criminal-editorial/1283208002/.

[183] C.D. Davidson-Hiers, "State Clemency Official to Black Applicant: How Many Kids Do You Have? By How Many Different Mothers?" *Florida Phoenix*, July 5, 2018. https://www.floridaphoenix.com/2018/07/05/challenging floridas-voter-restoration-process/.

[184] Davidson-Hiers, "State Clemency Official to Black Applicant" *Florida Phoenix*, July 5, 2018. https://www.floridaphoenix.com/2018/07/05/challengingfloridas-voter-restoration-process/.

[185] Derek Hawkins, "Florida's Ban on Ex-Felons Voting Is Unconstitutional and Biased, Federal Judge Rules," *The Washington Post* (Washington, D.C.), February 2, 2018. https://www.washingtonpost.com/news/morning mix/wp/2018/02/02/floridas-ban-on-ex-felons-voting-is-unconstitutional-and-biased-federal-judge rules/?noredirect=on.

[186] Hawkins, "Florida's Ban on Ex-Felons," *The Washington Post* (Washington, D.C.), February 2, 2018. https://www.washingtonpost.com/news/morning-mix/wp/2018/02/02/floridas-ban-on-ex-felons-voting-is unconstitutional-and-biased-federal-judge-rules/?noredirect=on.

Such incidents were not isolated to cases related to illegal voting. One analysis in the *Palm Beach Post* found that, "during his eight years as governor, Scott restored the voting rights of twice as many whites as blacks and three times as many white men as black men."[187] Additionally, compared to other states, like Kentucky and Iowa, that require voters to undergo a restoration process before regaining their right to vote, Florida's approval rating lags far behind. Between 2011 and 2016, Kentucky approved 86% of restoration requests; in Iowa, it was 93%.[188] Florida, conversely, only approved 8% of the appeals.[189] It is important to remember that the majority of those seeking clemency were convicted of minor crimes, many of them nonviolent. In Florida, "disturbing eggs of nesting turtles, catching lobsters with tails too short, burning a fire in public, walking through a posted construction site, and launching helium balloons into the air" can all result in a felony conviction.[190]

When compared to other states, Florida's felony disenfranchisement provision was anomalous. Because felonies are determined on a state-by-state basis, there is no baseline standard for which crimes should constitute a loss of suffrage. For example, commit murder in Maine, where there are no restrictions for people convicted of felonies, and vote in the next election, but drive with a suspended license in Florida, and potentially lose your right to vote for life.[191] Advocates for felony disenfranchisement often argued that if someone breaks the law, they should not have a say in creating future laws. However, the inconsistency of felony

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[187] Lulu Ramadan, Mike Stucka, and Wayne Washington. "Florida Felon Voting Rights: Who Got Theirs Back Under Scott?" *Palm Beach Post* (Palm Beach, FL), October 25, 2018. https://www.palmbeachpost.com/news/20181025/florida-felon-voting-rights-who-got-theirs-back-under-scott.
[188] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017.
[189] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017.
[190] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017.
[191] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017; Jean Chung, "Felony Disenfranchisement: A Primer." The Sentencing Project. Last modified June 27, 2019. https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/.

disenfranchisement across the county made it so that some previously incarcerated people did have a say, while others did not, even if they committed the same crime.

The discrimination within the carceral system coupled with the slowness and subjectivity of the restoration process provided the prima facie race neutral front for the state to target Black voters and tamper with the democratic process. By 2014, Florida became home to the highest population of people disenfranchised because of a felony conviction in the country. In 2018, however, Floridians would have the opportunity to vote on felony disenfranchisement. Yet, ironically, those impacted worst by the provision had little to no say at all if the amendment would stand.

Chapter 4: Ending Felony Disenfranchisement (2018-2021)

The newfound attention surrounding felony disenfranchisement in the 2000s and 2010s prompted many activists – including several who had been incarcerated themselves – to challenge the provision again in the 2010s. There were several reasons why citizens mobilized against felony disenfranchisement; in addition to earlier spurs to action like the high incarceration rates during the War on Drugs, the revisions made by Rick Scott, the rise of the Black Lives Matter movement, and an overall greater awareness of issues within the criminal justice system ungirded the most recent attempts to restore voting rights to Floridians convicted of felonies. Scott's revisions, although designed to reduce the number of people whose rights were restored, actually brought more attention to the issue. Between 2010 and 2016, "the number of disenfranchised Floridians grew by nearly 150,000 to an estimated total of 1,686,000."[192] Such a dramatic increase caught the attention of media outlets, from local newspapers like the *Pensacola News Journal* to national ones, like *The Washington Post*.[193] Because of its swing-state status, Florida also received more attention in 2016 as a result of the presidential election between Republican Donald Trump and Democrat Hillary Clinton. Like so many other elections in the state, the 2016 presidential election came down to a razor thin margin; Trump won Florida by just 1.2%. Such close numbers over such a divisive race prompted a closer investigation of Florida's elections. In December 2016, just a month after the election, the NAACP Legal Defense and Educational Fund (LDF) and the Sentencing Project released a report about felony disenfranchisement nationwide, finding that 6.1 million people, "more than twice the difference

[192] "Voting Rights Restoration Efforts in Florida." Brennan Center for Justice. Last modified May 31, 2019. https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida.
[193] Kevin Robinson, "1.7M Fla. Felons Barred from Voting," *Pensacola News Journal* (Pensacola, FL), November 2, 2016; Joe Davidson, "Millions of Felons, Many of Them Black, Have a Basic Right Taken Away for Life," *The Washington Post* (Washington, D.C.), October 10, 2016.

of the popular vote in the contentious 2016 presidential election," were disenfranchised because of a felony conviction.[194] In media coverage of this report, Florida took the spotlight as the state with the highest number of people disenfranchised because of a felony conviction.

The racial climate in Florida and across the nation had changed too. The rise of Black Lives Matter in July 2013, catalyzed by the shooting of Trayvon Martin in Sanford, FL, drew more attention to the persistence of anti-Black violence as well as structural racism. The legacy of the War on Drugs prompted scholars like Michelle Alexander to identify mass incarceration as a distinctively racial problem and, as the report by the LDF and Sentencing Project demonstrated, felony disenfranchisement was included along with other issues related to criminal justice. The Brennan Center's class action lawsuit had more explicitly linked felony disenfranchisement and racism, but by 2016, the number of Black Floridians disenfranchised by a felony conviction had never been higher; in that year, 21.4% of Florida's Black population was disenfranchised.[195] In other words, as the implications of felony disenfranchisement grew more extreme, more people began to pay attention. It was also easier to address felony disenfranchisement than it had been in the past. Unlike the activists of the Civil Rights movement, contemporary advocates of racial justice did not have to also address the severe Jim Crow legislation of the 1960s. Furthermore, between 1998 and 2018, the number of crimes in Florida decreased by 44.5%.[196] Public indignation about felony disenfranchisement was far more likely to exist when crime is not perceived as a rampant problem, as it had been during the law and order era.

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[194] *Targeted News Service* (Washington, D.C.), "Free Vote: LDF, Sentencing Project Release New Report on Felony Disenfranchisement," December 19, 2016.
[195] Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016," The Sentencing Project. Last modified October 6, 2016.
[196] Florida Department of Law Enforcement, "Total Index Crime for Florida, 1998 – 2018," In *Crime Trends in Florida*. http://www.fdle.state.fl.us/FSAC/Crime-Trends/Total-Index-Crimes.

Now that more Floridians were aware of felony disenfranchisement, racial justice activists revived the movement to undo the provision. Rather than work through the court system as the Brennan Center had done in 2000, these activists wanted to put felony disenfranchisement up for a vote. The Brennan Center agreed and partnered with the Florida Rights Restoration Coalition (FRRC) to draft a new provision –later known as Amendment 4 – to automatically restore voting rights. Their next goal was to get it on the 2018 ballot. For a new amendment to be included on Florida's ballot, advocates had to gather at least 766,200 petition signatures.[197] Once campaigners collect all of the signatures, at least 60 percent of Florida voters must approve the ratification of the amendment at the next election. Mobilizing this support was no small feat, and it required the work of several organizers across the state. One of the most important activists of this Florida movement was Desmond Meade, a Black man who was incarcerated in 2001 for drug and firearm charges, but, after his release, earned a law degree. In 2010, Meade became the president of the FRRC, and his activism became even more impassioned when "he could not vote for his wife, Sheena, in her bid for the Florida state House in 2016."[198] He then mobilized a grassroots campaign called Florida Second Chances, to begin petitioning to put felony disenfranchisement on the ballot. One of Meade's most effective strategies was using a redemption narrative, arguing that previously incarcerated people had already paid their debts to society and should not be punished any longer. As a result, Meade and his fellow organizers gained widespread bipartisan support. Darryl Paulson, a conservative member of the Heritage Foundation, was very outspoken in his support of dismantling felony disenfranchisement.

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[197] Steven Lemongello, "Floridians Will Vote This Fall on Restoring Voting Rights to Former Felons," *South Florida Sun Sentinel*, January 23, 2018. https://www.sun-sentinel.com/news/florida/fl-reg-felon-voters-amendment 20180123-story.html.

[198] Lemongello, "Floridians Will Vote" *South Florida Sun Sentinel*, January 23, 2018. https://www.sun sentinel.com/news/florida/fl-reg-felon-voters-amendment20180123-story.html.

Paulson claimed that Republicans tended to support felony disenfranchisement, while Democrats opposed it because of how each party believed it would impact future elections. Studies show that "ex-felons register as Democrat over Republican by a five-to-one ratio," but only "about one-third register to vote, and…about 20 percent actually vote."[199] Although the number of those who actually voted was small, the extra ballots could be enough to determine a close election, more likely in the favor of Democrats. Amendment 4, then, had the power to determine the future of Florida elections. Despite its potential impact, Paulson still supported Amendment 4. "My position is it's not a good way to make public policy based on how it might impact an election sometime down the road," Paulson said. "Voting rights restoration is economically right, morally right and just the right thing to do."[200] He also cited Florida's high number of disenfranchised citizens and the lengthy and arduous process of restoration as justifications for the removal of the provision. On January 23, 2018, Florida Second Chances had gained enough signatures to earn a spot on the 2018 midterm ballot. More than 1.1 million signatures had been gathered and, according to Meade, the "petitions [were] still pouring in."[201]

Although Meade and his fellow organizers had gained the support they needed, felony disenfranchisement still had its own array of defenders. The issue was hotly debated during the 2018 gubernatorial campaign between white Republican, Ron DeSantis, who opposed Amendment 4, and Black Democrat Andrew Gillum, who supported it. As with previous Florida Republican governors, DeSantis argued that Amendment 4 and criminal justice reform would endanger Florida residents. "When people are dangerous and they commit crimes that hurt

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[199] Paulson, "Fix Florida's Felon Vote." *Tampa Bay Times* (Tampa, FL), January 1, 2017.
[200] Lemongello, "Floridians Will Vote," *South Florida Sun Sentinel*, January 23, 2018. https://www.sun sentinel.com/news/florida/fl-reg-felon-voters-amendment20180123-story.html.
[201] Lemongello, "Floridians Will Vote," *South Florida Sun Sentinel*, January 23, 2018. https://www.sun sentinel.com/news/florida/fl-reg-felon-voters-amendment20180123-story.html.

people, we held them accountable," DeSantis said at a fundraiser on October 4, 2018.[202] DeSantis also cited high recidivism rates as a rationale for opposing the Amendment. "Prior offenders must show their commitment to be a law-abiding member of their community after serving their sentence before they have those rights restored," said Stephen Lawson, a spokesman for DeSantis.[203] Also in opposition to Amendment 4 was Rick Scott, who was running for Senate in 2018. Scott maintained the position that he had taken as governor, arguing that "in order for felons to have their rights restored, they have to demonstrate that they can live a life free of crime, show a willingness to request to have their rights restored and show restitution to the victims of their crime."[204]

Conversely, Gillum advocated for even more radical change, claiming that reforming criminal justice in Florida "begins with passing Amendment 4 and re-enfranchising a million people. And let me tell you it doesn't just end with rights restoration because we have got to take it to the next level."[205] Although Gillum was an avid supporter, Florida Democrats were split on the issue. For example, Florida state senator and Black Democrat Darryl Rouson, while supportive of Meade's efforts was unsure whether Amendment 4 would pass, and introduced legislation of his own. Rouson's proposal "would exclude a larger number of felons, including those convicted of burglary and a dozen other crimes" from automatic restoration.[206] The only crimes excluded from Amendment 4 were murder and rape. Although Rouson admitted that "the

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[202] Andrew Pantazi, "Gillum, DeSantis Present Contrasting Views on Criminal Justice," *The Gainesville Sun* (Gainesville, FL), October 19, 2018. https://www.gainesville.com/news/20181019/gillum-desantis-present contrasting-views-on-criminal-justice.
[203] Dara Kam, "Amendment 4 Would Give Felons Voting Rights Back," *Florida Times Union* (Jacksonville, FL), October 10, 2018.
[204] Kam, "Amendment 4," *Florida Times Union* (Jacksonville, FL), October 10, 2018.
[205] Andrew Pantazi, "Gillum, DeSantis Present Contrasting Views on Criminal Justice," *The Gainesville Sun* (Gainesville, FL), October 19, 2018. https://www.gainesville.com/news/20181019/gillum-desantis-present contrasting-views-on-criminal-justice.
[206] Lemongello, "Floridians Will Vote," *South Florida Sun Sentinel*, January 23, 2018. https://www.sun sentinel.com/news/florida/fl-reg-felon-voters-amendment20180123-story.html.

opposition has not yet begun to organize like supporters have," he also recognized that "a broad swath of Floridians might have angst or anxiety giving [some] violent offenders automatic restoration."[207] Come election day, Florida voters would have to decide for themselves both on a new governor, a new Senator, and whether previously incarcerated people should regain the vote.

Nearly two centuries after it had been implemented, felony disenfranchisement was put on the Florida ballot. By election day, the issue had gained national attention: Ben and Jerry's ice cream made Amendment 4 one of its top 2018 election issues, John Legend hosted an event in Orlando in support of the amendment, and John Oliver dedicated an entire episode of *Last Week Tonight* to felony disenfranchisement in Florida.[208] Many observers believed that the passage or rejection of Amendment 4 could sway the upcoming 2020 presidential election, and so the vote received a great deal of attention. On November 6, voters across Florida lined up to cast their ballots either in favor or in opposition to the adoption of Amendment 4. On the ballot, it read:

> This amendment restores the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole or probation. The amendment would not apply to those convicted of murder or sexual offenses, who would continue to be permanently barred from voting unless the Governor and Cabinet vote to restore their voting rights on a case by case basis.[209]

When the votes were tallied at the end of the day, 64.5% of Florida voters had approved Amendment 4, well over the 60% minimum required. "Today a lot of sunshine was brought to the state of Florida," said Meade. "We have created a more inclusive democracy which is good for all Floridians."[210] Interestingly, the same voters who approved Amendment 4 also elected Ron DeSantis and Rick Scott, both of whom won by less than 0.5%. The races were so close that

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[207] Lemongello, "Floridians Will Vote," *South Florida Sun Sentinel*, January 23, 2018. https://www.sun sentinel.com/news/florida/fl-reg-felon-voters-amendment20180123-story.html.
[208] Kam, "Amendment 4," *Florida Times Union* (Jacksonville, FL),October 10, 2018.
[209] "Florida Official Sample Ballots, 2018." Ballotpedia. https://ballotpedia.org/Florida_official_sample_ballots,_2018.
[210] *Targeted News Service* (Washington, D.C.). "Advancement Project: In Historic Win, Florida Restores Voting Rights to Returning Citizens." November 6, 2018.

the state required a recount for both the gubernatorial and the Senate races. Now that Amendment 4 had been passed and over 1 million Floridians – many of whom were more likely to vote Democrat – could vote, careful recounts might be a thing of the past. In the long history of felony disenfranchisement, the passage of Amendment 4 was monumental.

Now that Amendment 4 had passed, questions of implementation began. Despite the decision of Florida voters, a major court battle surrounding the logistics of Amendment 4 unfolded in the months leading up to the 2020 presidential election. On January 8, 2019 Amendment 4 took effect, but lawmakers were still debating when exactly previously incarcerated people had completed their sentences. Amendment 4 stipulated that, before voting rights were restored, Floridians must "complete *all* [emphasis added] terms of their sentence including parole and probation."[211] As governor, DeSantis expressed his dissatisfaction with Amendment 4, particularly in its negligence towards victims of violent crime, although violent crimes made up just 14% of the total number of crimes in Florida.[212] "Amendment 4 restores – without regard to the wishes of the victims – voting rights to violent felons, including felons convicted of attempted murder, armed robbery, and kidnapping, so long as those felons completed all terms of their sentences," DeSantis said in June 2019. "I think this was a mistake."[213] In order to slow the process of restoration, the Republican-dominated Florida legislature passed Senate Bill 7066 (SB7066), which required previously incarcerated people to pay all court ordered costs related to their convictions upon release – potentially including thousands of dollars – before their voting rights would be restored.[214] Florida was one of the few

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[211] "Florida Official Sample Ballots, 2018." Ballotpedia. https://ballotpedia.org/Florida_official_sample_ballots,_2018.
[212] Florida Department of Law Enforcement. "Total Index Crime for Florida, 1998 - 2018." In *Crime Trends in Florida*. http://www.fdle.state.fl.us/FSAC/Crime-Trends/Total-Index-Crimes.
[213] Ko Bragg, "On Suffrage Centennial, Black Women Fight What They Call Modern-Day 'Poll Tax.," *USA Today* (Arlington, VA), August 26, 2020.
[214] Lawrence Mower and Langston Taylor, "Florida ruled felons must pay to vote. Now, it doesn't know how many

states "where fees and fines are the sole source of funding for the courts."[215] Although not all charges resulted in fines, most Floridians convicted of felonies had money to pay; in 2019, the average amount due for a convicted defendant was $923.[216] For many formerly incarcerated people, such financial demands were insurmountable. For instance, of the new voters who had registered after the passage of Amendment 4, "the average income was $15,000 less than that of the average Florida voter."[217] As a result, many voting rights activists called the Court's ruling a modern-day poll tax. The conflicting interpretations of Amendment 4 led the issue of felony disenfranchisement back to the Florida courts.

DeSantis signed Senate bill 7066 on June 28, 2019, and, on the same day, the Brennan Center, the American Civil Liberties Union (ACLU), the ACLU of Florida, and the LDF sued and took the case to the U.S. District Court for the Northern District of Florida. They argued that Florida lawmakers were attempting "to vitiate Amendment 4's enfranchising impact by making restoration of voting rights contingent on a person's wealth."[218] The bill, they reasoned, "creates two classes of returning citizens: those are wealthy enough to vote and those who cannot afford to."[219] The Brennan Center found that the new policy would "prevent at least 770,000 people from voting," and it impacted Black voters the hardest. One expert study by Dr. Daniel A. Smith, the chair of the political science department at the University of Florida, found that "fewer than one in five (17.8%) black individuals released from control or supervision, who have a

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can," *Tampa Bay Times* (Tampa, FL), October 7, 2020. https://www.tampabay.com/news/florida politics/elections/2020/10/07/florida-ruled-felons-mustpay-to-vote-now-it-doesnt-know-how-many-can/.

[215] Tyler Kendall, "Felons in Florida Won Back Their Right to Vote. Now a New Bill Might Limit Who Can Cast a Ballot," *CBS News*, May 23, 2019. https://www.cbsnews.com/news/florida-felons-won-back-right-to-vote-new-bill might-limit-who-can-cast-ballot-2019-05-23/.

[216] Kendall, "Felons in Florida Won," *CBS News*, May 23, 2019. https://www.cbsnews.com/news/florida-felonswon back-right-to-vote-new-bill-might-limit-who-can-cast-ballot-2019-05-23/.

[217] Kendall, "Felons in Florida," *CBS News*, May 23, 2019. https://www.cbsnews.com/news/florida-felons-won back-right-to-vote-new-bill-might-limit-who-can-cast-ballot-2019-05-23/.

[218] Complaint, *Jones v. DeSantis*, 410 F. Supp. 3d 1196. (N.D. Fla. 2020), 3.

[219] Complaint, *Jones v. DeSantis*, 410 F. Supp. 3d 1196. (N.D. Fla. 2020), 3.

qualifying felony conviction, are eligible to register and voter under SB7066" because they still owed money.[220] Conversely, "more than one in four (26.0%) white individuals released…are eligible to register to vote or vote under SB7066."[221] Conservative think tanks, including the Cato Institute, founded by Republican businessman, Charles Koch, and the R Street Institute, also opposed the bill, stating that it "violates the bedrock guarantee of equal rights that every citizen enjoys."[222] In response, DeSantis appealed to the Florida Supreme Court to give an opinion on whether an individual had to pay fines and fees to regain their voting rights on August 9, 2019.[223] According to the Brennan Center, the Court decided "that the phrase "all terms of sentence," as used in Amendment 4, includes payment" of fines and fees "in conjunction with a felony conviction, but declined to define the word "completion.""[224] Then, on October 18th, the district court granted a preliminary injunction – an order allowing the court to uphold the status quo which, in this case, was the automatic restoration process of Amendment 4 – thereby permitting the plaintiffs of the Brennan Center lawsuit to vote despite being unable to pay their fees.[225] But DeSantis challenged the decision once again, this time in the 11th Circuit Court of Appeals. On February 19, 2020, the 11th Circuit upheld the preliminary injunction, but the final decision on the bill would be decided in court.

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[220] Daniel A. Smith, *Second Supplemental Report Expert Report*, Gainesville, FL, 2020, 17. https://www.brennancenter.org/sites/default/files/2020-05/Smith%20Second%20Supplemental%20Report.pdf.
[221] Smith, *Second Supplemental Report Expert Report*, Gainesville, FL, 2020, 17. https://www.brennancenter.org/sites/default/files/2020-05/Smith%20Second%20Supplemental%20Report.pdf.
[222] Lawrence Mower, "Two Conservative Groups Slam Florida Republicans' Amendment 4 Bill." *Tampa Bay Times* (Tampa, FL), January 19, 2020.
[223] "Litigation to Protect Amendment 4 in Florida." Brennan Center for Justice. Last modified August 3, 2019. https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida.
[224] "Litigation to Protect Amendment 4 in Florida." Brennan Center for Justice. Last modified August 3, 2019. https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida.
[225] "Litigation to Protect Amendment 4 in Florida." Brennan Center for Justice. Last modified August 3, 2019. https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida.

The district trial, *Jones v. DeSantis*, began on April 27, 2020. Robert Lewis Hinkle, a white judge appointed in the 1990s by President Clinton, heard the case. Earlier in 2014, Hinkle had struck down a ban against same-sex marriage, ruling that it was unconstitutional. During closing arguments of *Jones v. DeSantis*, Hinkle "said there was "no doubt" that Senate Bill 7066 discriminates against African Americans."[226] Less than a month after the trial began, on May 24, 2020, Hinkle ruled that SB7066 was unconstitutional on account of the Fourteenth and Twenty-Fourth Amendments as well as the National Voter Registration Act.[227] It appeared to be a victory for Amendment 4, but DeSantis and the state were still not satisfied. They challenged Hinkle's ruling in the 11th Circuit Court of Appeals, the federal court with jurisdiction over Florida, Georgia, and Alabama. On September 11, 2020, the 11th Circuit reversed the May decision, ruling that previously incarcerated people in Florida would have to pay all court ordered costs before registering to vote.[228] The 6-4 decision came just months before the 2020 presidential election. President Donald Trump, who was running for re-election, had appointed six of the twelve judges on the court. [229] The six judges who voted to reverse the decision "were appointed by either Trump or President George W. Bush."[230] All of them were white. Presidents Barack Obama and Bill Clinton had appointed the four dissenting judges, of whom only one, Charles R. Wilson, was Black. Although some wealthy donors, such as Michael Bloomberg, stepped in to

[226] Tim Elfrink, "The Long, Racist History of Florida's Now-Repealed Ban on Felons Voting," *The Washington Post* (Washington, D.C.), November 7, 2018.
[227] "Litigation to Protect Amendment 4 in Florida." Brennan Center for Justice. Last modified August 3, 2019. https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida.
[228] Lawrence Mower and Langston Taylor, "Florida ruled felons," *Tampa Bay Times* (Tampa, FL), October 7, 2020. https://www.tampabay.com/news/florida politics/elections/2020/10/07/florida-ruled-felons-mustpay-to-vote-now-it-doesnt-know-how-many-can/.
[229] Two judges, Robin S. Rosenbaum and Andrew L. Brasher, recused themselves from the case.
[230] Lawrence Mower, "Florida Felons Lose Voting Rights Case in Federal Appeals Court," *Tampa Bay Times* (Tampa, FL), September 11, 2020. https://www.tampabay.com/florida-politics/buzz/2020/09/11/florida-felons-lose voting-rights-case-in-federal-appeals-court/.

pay these charges so that more people could vote in the 2020 election, the battle continues today in March 2021.

The passage of Amendment 4 marked a crucial stage in the history of felony disenfranchisement in Florida, finally creating the likelihood that it would be abandoned. The vote on November 6, 2018 was the single most decisive action taken to change the law. However, the challenges made in 2019 and 2020 demonstrated that this story was not over yet. Senate Bill 7066 created confusion surrounding the question of who could vote and what steps needed to be taken in order for previously incarcerated individuals to regain their voting rights. Although more activists and lawmakers in Florida and across the country now recognized felony disenfranchisement as a *racial* problem, proving it in the courts remained challenging because of the provision's seemingly race neutral language. The race neutralism that had allowed for the persistence of felony disenfranchisement from 1868 onward and that had hindered similar action in the 2000s to undo the provision continued to influence contemporary debates about the constitutionality of Amendment 4 and its subsequent legislation.

Conclusion

Felony disenfranchisement was one of the most enduring voting laws in the state of Florida. From its inception in 1838 and the revisions of the 1868 constitutional convention, felony disenfranchisement limited who could vote and, because of the racial discrimination in the criminal justice system that emerged after the abolition of slavery, a disproportionate number of those without access to the ballot box were Black. For several decades, felony disenfranchisement remained stagnant. Few legislators paid any attention to it, and even fewer identified it as a racial issue, but, as with many other Reconstruction-era policies, felony disenfranchisement continued to target Black voters. It was not until the rise of mass incarceration in the 1980s did the racial impact become more apparent, as more Black people were behind bars and disenfranchised for a felony conviction than ever before. The ensuing decades were most dynamic period in the existence of the law because activists, legislators, and the media began to recognize the widespread racial implications of felony disenfranchisement, and many of them sought to abolish the law. In 2018, Floridians approved Amendment 4, which would grant automatic voter restoration to people who had committed felonies, but roadblocks still arose to prevent the amendment's full implementation.

Further research outside the scope of this project remains to be done. For instance, an investigation of the impact of felony disenfranchisement on other marginalized racial groups in Florida, such as the state's Hispanic or Asian-American populations, would provide a deeper understanding of the racial implications of this law. Additionally, a gendered analysis of felony disenfranchisement in the state would both offer a more intersectional approach to the topic and insight into the legacy of criminal stereotypes of Black men, especially if one were to compare the voting rights restoration rates of white men, white women, Black men, and Black women.

Finally, the implementation of Amendment 4 will continue to evolve as well, but these future events remain to be seen.

Interpretations of voting rights in the United States have fluctuated over time. At the country's founding, only white propertied men could vote. Suffrage expanded over time, first enfranchising all white men, then Black men (although Black codes and Jim Crow legislation prevented many of them from voting), then white women, and finally Black men and women. The overall trajectory appears to be a steady march towards egalitarianism, but history demonstrates that the expansion of voting rights was always contested. As with felony disenfranchisement, the expansion of suffrage across these different groups required profound social organizing, and even then, there were steps towards egalitarianism and steps away from it. Despite its impact on Florida's election, it is rare that felony disenfranchisement receives much attention in the history books. Other disqualifying measures of the Reconstruction era, like poll taxes and grandfather clauses, were understandably the focus of Jim Crow narratives in American history. However, while these other laws were eventually abolished, the unique endurance of felony disenfranchisement in Florida, and the ways in which it impacted the state's close elections, demonstrated the longevity of structural racism in the United States. Although the law might not have been the main voting blockage for Black voters during the Jim Crow era when compared to other policies, its impact in the late 20th and early 21st centuries underscored how racism can adapt within the legal system to concentrate political power among a few and restrict the votes of many. "There's something sacred about a person feeling like they're part of society, like they're a human being, like their voice matters," said Desmond Meade in a 2020

interview on *60 Minutes*.[231] Indeed, both activists supporting the passage of Amendment 4 and those opposing it demanded that Floridians answer the question: who should vote?

[231] Brit McCandless Farmer, "Florida Denies Amendment 4 Advocate Desmond Meade Full Pardon," *60 Minutes Overtime*, September 27, 2020. https://www.cbsnews.com/news/florida-amendment-4-advocate-desmond-meade pardon-2020-09-27/.

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