

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE and
ACTION NC,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS,
et al.,

Defendants.

Civil Action No.
1:20-cv-00876

EXPERT REPORT OF PROFESSOR JAMES L. LELOUDIS II
ON BEHALF OF NC APRI AND ACTION NC

Table of Contents

I. Summary Findings	2
II. Background and Qualifications.....	6
III. Materials Reviewed.....	7
IV. Scope.....	8
V. Preface – Infamy, Slavery, and Free Black Disenfranchisement Before the Civil War	8
VI. Civil War and Reconstruction	11
A. War and Emancipation	11
B. From Emancipation to the Black Code	12
C. First Reconstruction Act, Biracial Politics, and Universal Male Suffrage	13
D. Terror and Retrenchment.....	15
E. Constitutional Reform, Felony Disenfranchisement, and the Strict Liability Voting Law.....	17
F. Disqualified for Life	22
VII. Fusion Politics, Inclusive Democracy, and a New Campaign for White Supremacy.....	25
A. Economic Hardship and a Biracial Republican-Populist Alliance.....	25
B. "For the Good of the Whole"	28
C. Terror and Retrenchment, Redux	29
D. Constitutional Disenfranchisement	30
VIII. From Jim Crow to Civil Rights.....	33
A. Jim Crow's Regime	33
B. Failed Efforts to Reform Felony Disenfranchisement and the Strict Liability Voting Law.....	35
IX. Race and Retrenchment	38
A. Echoes of Fusion – A New Biracial Progressive Alliance.....	38
B. Political Realignment.....	40
C. Black President, White Fury	44
D. <i>Shelby County v. Holder</i> and House Bill 589.....	46
E. The Strict Liability Voting Law Resurrected	48
X. Conclusion	53
APPENDIX.....	55

I. Summary Findings

My name is James L. Leloudis II. I have taught history at the University of North Carolina at Chapel Hill for thirty-four years, with a focus on North Carolina and the American South. I have published extensively on the history of the state and region, and my scholarship has won awards from the nation's leading professional associations in my field.

I was retained by the Plaintiffs in this case to assess whether there is a historical relationship between racial discrimination and North Carolina's strict liability voting law, NCGS 163-275(5). The law requires no evidence of intent for the prosecution of persons with felony convictions who vote without prior restoration of their citizenship rights. Based on my specialized knowledge of the history of North Carolina and the American South, and having reviewed the Plaintiffs' amended complaint, historical scholarship on race and politics in the American South, period newspapers, the public laws of North Carolina, state and federal legislative records and court cases, reports from various state and federal agencies, and other relevant archival materials, my findings are that:

- North Carolina lawmakers codified felony disenfranchisement and enacted the strict liability voting law in 1877. Their purpose, by their own account, was to impede the reconstruction of a defeated slavocracy¹ according to principles of racial equality, equal citizenship, and equal protection of the law.
- The strict liability voting law shared the discriminatory intent of its parent, felony disenfranchisement, which had a long association with racialized conceptions of criminality and infamy that pre-dated the Civil War. That linkage made strict liability voter prosecution an obvious instrument of choice in legislative efforts to obstruct black political participation in the post-war, Reconstruction era.

¹ This term broadly describes North Carolina prior to the Civil War – an economic, political, and social order built upon the institution of racial slavery.

- The strict liability statute was unique in its specificity and severity. It applied to only one voter offense: voting while ineligible because of a felony conviction. Under the terms of the statute, the act of casting a ballot was itself sufficient to establish guilt – a stark dissimilarity when compared to other voter offenses, all of which required evidence of intent to commit a fraud. Today, these distinctions persist. Strict liability applies to only one offense attributable to electors: voting while denied that right on account of a felony conviction. All other voter offenses require evidence of intent.
- From the outset, disproportionate rates of incarceration put black men at heightened jeopardy for prosecution and felony conviction under the strict liability voting law. In their 1878-1880 biennial report, prepared shortly after the statute's enactment, officials at the state penitentiary reported that black men accounted for 88 percent of newly incarcerated male inmates. By comparison, blacks constituted just 38 percent of North Carolina's general population. Put another way, blacks were over-represented among the prisoners by a ratio of 2.3:1.
- That racially disproportionate rate of incarceration has persisted for more than one hundred and forty years. Today, blacks constitute 22 percent of North Carolina's general population, but they make up 50 percent of inmates in the state's prisons and 51 percent of those held in federal penal facilities located within the state's borders. These figures equate to an over-representation ratio of 2.3:1, precisely the same as in 1878-1880.
- The strict liability voting law again took center stage in North Carolina politics during the late 1890s, two decades after its enactment. Democrats, who swore allegiance to white supremacy, used the statute to counter a biracial Fusion alliance of black Republicans and white Populists that had won control of state government. Democrats waged violent campaigns against the alliance in 1898 and 1900, charging that Fusion leaders had corrupted the electoral process by

herding "negro ex-convicts" to the polls, fraudulently enfranchising men who had "no right to vote at all."

- Once restored to power, Democrats sought to secure their victory for all time. In 1899, they drafted an amendment to the state constitution that aimed to block black political participation by imposing a literacy test as a requirement for registering to vote. They also re-enacted felony disenfranchisement and the strict liability voting law. Democrats used both measures to stoke racial animosity, restrict black men's access to the polls, and win ratification of the constitutional amendment by popular referendum in the general election of 1900.
- Once implemented, the amendment made the strict liability voting law redundant. Indeed, the statute laid dormant throughout the twentieth century.
- In the Jim Crow era, between 1900 and passage of the Voting Rights Act of 1965, the literacy test trumped strict liability voter prosecution because it provided a far more comprehensive means of barring black citizens from voter registration rolls.
- The Voting Rights Act outlawed the literacy test and cleared the way for steady black gains in voter registration and political representation from the late 1960s through the early 2000s. But even in that changed circumstance, North Carolina lawmakers and election officials showed no significant interest in active enforcement of the strict liability voting law.
- The reason for that lack of interest is unclear, though the Voting Rights Act itself may offer a clue. Forty of North Carolina's one hundred counties were covered by Section 5 of the act, which required federal "preclearance" of "changes in election practices and procedures." Given this surveillance, it is plausible that active voter prosecution under the strict liability statute would have provoked further federal intervention, thus outweighing any potential for slowing black civil rights advances.

- During the last quarter of the twentieth century, the black freedom movement added momentum to a profound political realignment, in North Carolina and the nation. Republicans claimed the mantle of conservatism, while Democrats refashioned their party as the standard bearer of civil rights and expanded access to the electoral franchise.
- In 2013, the U.S. Supreme Court's ruling in *Shelby County v. Holder* nullified Section 5 of the Voting Rights Act. That judgment cleared the way for Republican lawmakers, now the majority in North Carolina's General Assembly, to roll back nearly two decades of reform that had produced dramatic growth in black voter registration and turnout.
- Republicans' ambitious legislation – House Bill 589, An Act to Restore Confidence in Government – eliminated same-day registration, the first week of early voting, and a pre-registration program that added sixteen- and seventeen-year-olds to the voter rolls when they acquired a driver's license. It also loosened rules for challenging voters' qualifications on Election Day and imposed a new voter photo-ID requirement.
- In 2016, the U.S. Court of Appeals for the Fourth Circuit voided House Bill 589 on grounds that it evidenced clear discriminatory intent by targeting black voters "with almost surgical precision."
- After that setback, Republican leaders pivoted to tighter regulation of access to the ballot box. The option that dominated public debate was a voter photo-ID amendment to the state constitution, which was ratified by popular referendum in 2018. Though it gained far less publicity, strict liability voter prosecution was also in the picture.
- In 2017, the State Board of Elections issued a report on the 2016 general election. The document highlighted results of a so-called "felon audit" that identified 441 individuals with felony convictions who were suspected of casting an illegal ballot. Of that group, 290 – 68.08 percent – were black. The board eventually referred 409 cases to local district attorneys for prosecution, listing itself as the complainant.

- The election board also offered recommendations for software and data-sharing solutions that would help local election officials identify persons with active felony convictions, and for improved means of educating such persons about their legal status. The objective, in the words of the board's Republican Executive Director, was to "support successful [future] prosecutions."
- All these facts point to a single conclusion: North Carolina's strict liability voting law is a relic of a long, dark era of racial injustice. It was originally enacted for the explicit purpose of suppressing the black vote, and it continues to have a disproportionate, discriminatory effect on black North Carolinians with felony convictions. In this respect, the statute violates fundamental principles of equal citizenship and equal protection of the law.

These opinions are explained and supported in detail below.

II. Background and Qualifications

I am employed as Professor of History at the University of North Carolina at Chapel Hill. I hold a B.A., with highest honors, from the University of North Carolina at Chapel Hill (1977), an M.A. from Northwestern University (1979), and a Ph.D. from the University of North Carolina at Chapel Hill (1989). My primary training was in the history of the United States, with an emphasis on the nineteenth- and twentieth-century American South. For the past thirty-four years I have taught undergraduate and graduate courses in this area of specialization. I am also the author or co-author of four books on the history of labor, education, poverty, and voting rights in North Carolina.

My scholarship has won a number of prestigious awards, including the Louis Pelzer Prize for the best essay by a graduate student (1982, Organization of American Historians); the Philip Taft Labor History Award for the best book on the history of labor (1988, New York State School of Industrial and Labor Relations, Cornell University); the Merle Curti Award for the best book on American social history (1988, Organization of American Historians); the Albert J. Beveridge Award for the best book on the history of the United States, Latin America, or Canada (1988, American Historical Association); the

Mayflower Cup for the best non-fiction work on North Carolina (1996, North Carolina Literary and Historical Association); and the North Caroliniana Society Award for the best book on North Carolina history (2010).

In 1982, as a graduate student in history at the University of North Carolina at Chapel Hill, I conducted research that became part of the expert testimony provided by Professor Harry L. Watson in *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984). I have prepared expert reports for the plaintiffs in the following cases: *North Carolina State Conference of the NAACP v. McCrory*, 182 F. Supp. 3d 320 (M.D.N.C. 2016), *North Carolina State Conference of the NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019), *Holmes v. Moore*, Wake County, 18 CVS 15292, and *Common Cause v. Hall*, Wake County, 21 CVS 015426.

I produced this Report under contract with Simpson Thacher & Bartlett LLP and the Southern Coalition for Social Justice, representing the North Carolina A. Philip Randolph Institute and Action N.C. My billing rate is \$300/hour. Payment is not contingent on reaching specific conclusions as a result of my research, or on the outcome of my findings.

A detailed record of my professional qualifications and publications is set forth in the curriculum vitae appended to this Report, which I prepared and know to be accurate.

III. Materials Reviewed

I have reviewed the Plaintiffs' amended complaint and conducted qualitative research on the history of black disenfranchisement – giving particular attention to felony disenfranchisement and strict liability voter prosecution – in North Carolina, from the antebellum era to the present day. Sources include historical scholarship on race and politics in the American South, period newspapers, the public laws of North Carolina, state and federal legislative records and court cases, reports from various state and federal agencies, and other relevant archival materials. All the sources relied upon for this Report are footnoted and fully cited herein. In accordance with established documentary standards in historical

scholarship, each footnote references the sources quoted and/or consulted to substantiate the paragraph to which the note is attached.

IV. Scope

This Report examines the history of North Carolina's strict liability voting law, NCGS 163-275(5), which requires no proof of intent for the prosecution of persons convicted of a felony who vote without prior restoration of their citizenship rights. The Report begins with the English common law concept of infamy, which was the basis for disenfranchising free black men in 1835; it pinpoints the origins of felony disenfranchisement and the strict liability voting law in the white backlash against black freedom and equal citizenship, first during Reconstruction and again in the late 1890s; and it follows the story through the Jim Crow and civil rights eras, concluding with contemporary efforts to pursue voter prosecution under the strict liability statute.

V. Preface – Infamy, Slavery, and Free Black Disenfranchisement Before the Civil War

As historian Pippa Holloway has observed, "laws disenfranchising certain classes of convicted criminals have long been part of the Anglo-American legal tradition," and in the slaveholding South, including North Carolina, those laws had a deep resonance with white assumptions about black Africans' brutishness and innate "propensity for crime." Prior to 1877, North Carolina did not impose the penalty of disenfranchisement for felony conviction. Election officials and the courts relied instead on the concept of infamy to bar a broad class of "disreputable" men from the polls. In the tradition of English common law, a man was made infamous by a crime that revealed his depravity, or by a punishment, such as whipping or forced labor, that degraded him in public view and denied him the respect of his fellow citizens. By that standard, offenses that gave evidence of moral turpitude or premeditated intent to do harm – such as perjury, larceny, conspiracy, vagrancy, and fraud – were considered infamous, while those committed in the heat of passion – murder and assault, for example – ordinarily were not.

Infamy also provided a rationale for the civic death imposed on enslaved blacks. In the eyes of their enslavers, they were degraded by the discipline of the lash and the unfree condition of their labor; therefore, they had no claim on humanity's otherwise inalienable rights.²

This reasoning also informed the 1835 amendment to North Carolina's constitution that stripped free black men of the right to vote – a right that they had exercised since the constitution's original framing in 1776. The amendment emerged from a convention called by voters at the behest of the General Assembly to undertake a broad revision of the state's fundamental law. It was shaped in large measure by rumors and fear of a general black insurrection. Six years earlier, David Walker, a free black abolitionist born in Wilmington, had published his *Appeal* for the righteous destruction of slavery, and in 1831, Nat Turner's bloody rebellion in neighboring Virginia resulted in the slaughter of fifty-five white men, women, and children. The amendment's chief advocates represented counties in the eastern and central Piedmont sections of the state, where the black population, enslaved and free, was most densely concentrated. Over the course of two days of debate, barely a week into the convention's deliberations, delegates from those regions laid out the case for the disenfranchisement of free black men.³

Delegate Hugh McQueen, a member of the state Senate, set the stage by reminding the convention that "the negro came to this country" as a "debased" captive – and debased he remained, both by law and by nature. Others endorsed that claim. Jesse Wilson, representing Perquimans County,

² Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship* (New York: Oxford University Press, 2014), 1, 4-5, 62.

³ For a full account of the constitutional convention and its deliberations on free black suffrage, see Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 418-46. Articles 7 and 8 of the 1776 Constitution detailed the qualified right of free adult men to vote for members of the state House of Commons and the state Senate. See Constitution of North Carolina, December 18, 1776, The Avalon Project, Lillian Goldman Law Library, Yale University, <https://bit.ly/3K30r8X>. Prior to amendment of the constitution in 1835, members of the General Assembly elected the governor. See *Proceedings and Debates of the Convention of North Carolina, Called to Amend the Constitution of the State, Which Assembled at Raleigh, June 4, 1835* (Raleigh: Joseph Gales and Son, 1836), 335, 422 (Art. 2, § 4), <https://bit.ly/3zrapMc>; On white fear of black insurrections, see Lacy K. Ford Jr., "Making the 'White Man's Country White': Race, Slavery, and State-Building in the Jacksonian South," *Journal of the Early Republic* 19 (Winter 1999), 718.

where blacks constituted more than 40 percent of the population, called attention to the fact that the state barred black witnesses from testifying against whites in a court of law. This, he explained, left free blacks as defenseless as their enslaved brethren against degrading racial violence. "A white man," Wilson noted, "may go into the house of a free black, mal-treat and abuse him, and commit any outrage upon his family," all without fear of legal retribution, "unless some white person saw the acts committed." James Bryan, a delegate from coastal Carteret County, observed that similar degradation befell blacks who, when convicted of even "a petty misdemeanor," could not pay the legally prescribed fine. In those circumstances, courts routinely sentenced the guilty to "**civil slavery**" [emphasis in the original] by hiring them out to white men for a period of forced labor. Proponents of disenfranchisement described these disabilities as signs of the racial curse that rendered all blacks infamous – a curse that they carried in their blood and passed from one generation to the next. However much "colored persons might be elevated," Jesse Wilson proclaimed, "their color alone would prove a barrier to keep them in a degraded state."⁴

The disenfranchisement amendment echoed these arguments. It stipulated that "no free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive (though one ancestor of each generation may have been a white person) shall [be entitled to] vote." Convention delegates, led by those who represented eastern counties, approved the amendment by a close vote of 66 to 61; months later, total abrogation of free black men's right to vote (together with other constitutional revisions) won ratification in a popular referendum. That victory confirmed the principle that delegate James Bryan had proclaimed during the convention's deliberations: "This is a

⁴ *Proceedings and Debates of the Convention of North Carolina, 1835*, 62, 66, 71, 77, 80, <https://bit.ly/3zrapMc>. For the convention's deliberations set in the context of broader debate over free blacks' political rights, see Emil Olbrich, "The Development of Sentiment on Negro Suffrage to 1860," *Bulletin of the University of Wisconsin*, History Series, vol. 3, no. 1 (Madison: The University of Wisconsin, 1912), 7-128.

nation of white people – its offices, dignities, and privileges are alone open to, and to be enjoyed by, white people."⁵

VI. Civil War and Reconstruction

A. War and Emancipation

In 1861, North Carolina's political elite rallied the state to arms in defense of white rule. At a secession convention gathered in Raleigh in May of that year, they severed ties to the Union and swore allegiance to a new nation, the Confederate States of America. Months earlier, Confederate Vice-President Alexander H. Stephens had made the rebellion's purpose clear: Southern insurrectionists aimed to defend and secure "the great truth that the negro is not equal to the white man; that slavery – subordination to the superior race – is his natural and normal condition."⁶

The civil war that followed consumed the lives of three-quarters of a million combatants and destroyed both the Confederacy and the institution of racial slavery. Ratified in December 1865, eight months after the South's surrender, the Thirteenth Amendment wrote black emancipation into the federal Constitution. In Congress, northern Republicans also advanced legislation that, in time, would frame the Fourteenth and Fifteenth Amendments, granting former slaves birthright citizenship and securing the right of all adult men to vote, regardless of "race, color, or previous condition of servitude." Some among North Carolina's white elite met this upheaval in the racial order with equanimity and began to adjust their politics accordingly. Most others professed a fierce determination to reclaim the mastery they had long exercised over black lives and labor. As historian Pippa Holloway has observed,

⁵1835 Amended Constitution (Art 3, §3), *Proceedings and Debates of the Convention of North Carolina, 1835*, 67, 80-81, 421, <https://bit.ly/3zrapMc>; Ford, *Deliver Us from Evil*, 435; Harold Counihan, "The North Carolina Constitutional Convention of 1835: A Study in Jacksonian Democracy," *North Carolina Historical Review* 46 (October 1969), 347, 361.

⁶ Henry Cleveland, *Alexander Hamilton Stephens, in Public and Private, with Letters and Speeches, Before, During, and Since the War* (Philadelphia: National Publishing Company, 1866), 721. On North Carolina's secession from the Union, see Joseph Carlyle Sitterson, *The Secession Movement in North Carolina* (Chapel Hill: University of North Carolina Press, 1939).

they attempted to achieve that goal by restoring the once "clear line between citizens and infamous non-citizens, between whites who ruled and blacks who were ruled."⁷

B. From Emancipation to the Black Code

In the immediate aftermath of emancipation, self-styled white Conservatives – later, they would call themselves Democrats – scrambled to forestall blacks' access to the ballot box and other rights of citizenship. Infamy was again one of their weapons of choice. In 1866, state lawmakers ratified a body of legislation that was known informally as the Black Code. One of the acts gave sheriffs wide latitude to arrest freedmen on charges of vagrancy, a misdemeanor loosely defined as "dissipation . . . or sauntering about without employment." That broad language put many newly emancipated black men at jeopardy. By the hundreds, if not the thousands, they were traveling from town to town, searching for economic opportunity, or for lost relatives who had been sold away on the auction block. All were at risk for arrest and prosecution if, in the judgment of white authorities, they had "no apparent means of subsistence." Those found guilty were fined, imprisoned, or sent to "the workhouse for such time as [a] court may think fit." These degrading punishments, under common law, rendered convicted men infamous and disqualified them to vote.⁸

At the local level, political leaders and officers of the law extended this work of defamation into the public square. In early 1867, *Harper's Weekly* reported on events in Raleigh, which other observers claimed were typical of a campaign that Conservatives were waging statewide. "**Every day** [emphasis in

⁷ J. David Hacker, "A Census-Based Count of the Civil War Dead," *Civil War History* 57 (December 2011), 311; Paul D. Escott, *Many Excellent People: Power and Privilege in North Carolina, 1850-1900* (Chapel Hill: University of North Carolina Press, 1985), 84, 113-35; Holloway, *Living in Infamy*, 31.

⁸ James B. Browning, "The North Carolina Black Code," *Journal of Negro History* 15 (October 1939), 461-73; *Public Laws of the State of North Carolina, Passed by the General Assembly, at the Session of 1865-66, and 1861-62-63 and 1864, Together With Important Ordinances Passed by the Convention of 1866* (Raleigh: Robert W. Best, 1866), 111, <https://bit.ly/3ZRT6i7>. On black mobility in the immediate aftermath of emancipation, see Heather Andrea Williams, *Help Me to Find My People: The African American Search for Family Lost in Slavery* (Chapel Hill: University of North Carolina Press, 2012). For Black Codes in other southern states, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper Perennial, updated edition, 2014), 199-202.

the original], " for almost a month while the Wake County Superior Court was in session, crowds of "nearly five hundred people" had gathered to witness the "public whipping of colored men as fast as they were convicted and sentenced." In North Carolina, the magazine explained to its national audience, a "sentence of whipping operates . . . as a civil disqualification, so that none of these victims . . . could ever vote, even if the suffrage were extended to colored men. **They are disqualified in advance** [emphasis added]." On the floor of the U.S. House of Representatives, Pennsylvania Republican Thaddeus Stevens also raised the alarm. "I have received information from . . . the Freedmen's Bureau," he declared, "that in North Carolina . . . where punishment at the whipping-post deprives a person of the right to vote, they are now . . . whipping negroes for a thousand and one trivial offenses." In one county, whites "had whipped every adult male negro"; all were "convicted and sentenced at once . . . for the purpose" of denying them any future right to vote.⁹

C. First Reconstruction Act, Biracial Politics, and Universal Male Suffrage

Conservatives' defiant opposition to black civil equality – throughout the former Confederacy, including North Carolina – was an affront to the Republican majority in Congress, who believed that it made a mockery of the lives sacrificed to preserve the Union and destroy the institution of racial slavery. In March 1867, Republicans replied with passage of the first of four Reconstruction Acts. That statute authorized continued occupation of the defeated Confederacy, instructed army commanders to organize conventions that would rewrite the rebel states' constitutions, and granted all adult men – "of

⁹ "Whipping and Selling American Citizens," *Harper's Weekly* (January 12, 1867), 18; *Congressional Globe*, 39th Congress, 2nd session, part 1, January 7, 1867, 324. Stevens appears to have been referencing a report from Robert Avery, a U.S. Army officer involved in overseeing Reconstruction in North Carolina. See Robert Avery to Jonathan C. Robinson, December 17, 1866, Letters Received, Second Military District, Records of the U.S. Army Continental Commands, RG 393, National Archives of the United States, file P-715, 1866, M619, roll 504, *quoted in* Holloway, *Living in Infamy*, 33. For additional national coverage, see Carl Shurz, "The True Problem," *Atlantic Monthly* (March 1867), 374. For local accounts, see "State Items" and "Whipping by the Courts," *Daily Standard* (Raleigh, N.C.), December 18 and 20, 1866; "North Carolina Sustained by the Government," *Weekly Sentinel* (Raleigh, N.C.), December 24, 1866; "Conflict Between Wake Superior Court and the Military," *Weekly Standard* (Raleigh, N.C.), December 26, 1866; "Supreme Court Decision," *Weekly Progress* (Raleigh, N.C.), December 27, 1866.

whatever race, or color, or previous condition of servitude" – the right to vote in the election of convention delegates. Though limited, that extension of the franchise radically altered North Carolina politics by enabling the formation of a biracial alliance within a newly established state Republican Party.



Black men registering to vote in advance of the election of delegates to the 1868 constitutional convention.
Harper's Weekly (September 28, 1867), 621.

When voters went to the polls, they elected Republican candidates to 107 of the 120 seats in the constitutional convention. Fifteen of those delegates were black, including minister and educator John W. Hood, who, in 1865, had presided over North Carolina's first black political assembly. At that gathering, black leaders – many of them only months removed from enslavement – petitioned state lawmakers for "adequate compensation for our labor . . . education for our children . . . [nullification of] all the oppressive laws which make unjust discrimination on account of race or color," and, above all else, the right of every newly emancipated black man "**to carry his ballot to the ballot box** [emphasis in the original]." ¹⁰

¹⁰ "An Act to Provide for the More Efficient Government of the Rebel States," *Statutes at Large, Treaties, and Proclamations of the United States of America, from December 1865 to March 1867*, vol. 14 (Boston: Little, Brown, and Company, 1868), 428-29, <https://bit.ly/3KlcDgl>; Escott, *Many Excellent People*, 135-42; Joseph Grégoire de Roulhac Hamilton, *Reconstruction in North Carolina* (New York: Columbia University, 1914), 240-50;

During the winter of 1867-1868, delegates to the constitutional convention produced a document that defined, by the standards of the age, a thoroughly democratic polity. Their proposed constitution granted all adult men the right to vote, guaranteed free elections, removed property qualifications for holding high state office, and put control of local government in the hands of elected county commissioners rather than appointed justices of the peace. Black delegates knew that the success of these reforms would depend on safeguarding broad access to the ballot box. To that end, they crafted an ordinance that criminalized attempts to intimidate "any qualified elector . . . by violence or bribery, or by threats of violence or injury to his person or property, or by depriving an elector of employment, or by threatening to deprive him of employment." In May 1868, voters ratified the new constitution, filled six of North Carolina's seven Congressional seats with Republicans, elected Republican William W. Holden governor, and gave Republicans a two-thirds majority in the General Assembly. The scale of that victory reflected the fact that in North Carolina, the percentage of whites who crossed the race line and made common cause with newly emancipated blacks was larger than in any other southern state.¹¹

D. Terror and Retrenchment

Conservatives moved swiftly and with determination to roll back this political revolution. They denounced their Republican opponents as a "mongrel mob," spawned by "negro suffrage and social disorder," and they warned nonelite whites of racial leveling. "IT IS IN THE POOR MAN'S HOUSE," the editor of a Wilmington newspaper exclaimed, "THAT THE NEGRO WILL ENFORCE HIS EQUALITY." Such

Leonard Bernstein, "The Participation of Negro Delegates in the Constitutional Convention of 1868 in North Carolina," *Journal of Negro History* 34 (October 1949), 391; Sidney Andrews, *The South Since the War, as Shown by Fourteen Weeks of Travel in Georgia and the Carolinas* (Boston: Ticknor and Fields, 1866), 121, 129-30; *Convention of the Freedmen of North Carolina, Official Proceedings* (Raleigh: n.p., 1865), 5, 14, <https://unc.live/40zgVg0>.

¹¹ *Constitution of the State of North Carolina, Together with the Ordinances and Resolutions of the Constitutional Convention, Assembled in the City of Raleigh, Jan. 14th, 1868* (Raleigh: Joseph W. Holden, 1868), 452, <https://unc.live/3KrHQVx>; Horace W. Raper, *William W. Holden: North Carolina's Political Enigma* (Chapel Hill: University of North Carolina Press, 1985), 101; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper and Row, 1988), 332.

provocations struck deep chords of sentiment in a society that had been organized around racial division for more than two hundred years. But words alone could not break Republicans' hold on power. To strike the crippling blow, Conservatives organized local "camps" of the Ku Klux Klan and initiated a terrorist campaign of vigilante violence. Klan activity peaked in 1869 and 1870, as masked night riders committed "every degree of atrocity; burning houses, whipping men and women, beating with clubs, shooting, [and] cutting." Klansmen also resorted to political assassination. In Alamance County, they lynched Wyatt Outlaw, a black town commissioner and constable, and in neighboring Caswell County, they murdered John W. Stephens, a white Republican legislator, in the basement of the county courthouse.¹²

Governor Holden responded by declaring martial law in both counties, and in the summer of 1870, he mustered state troops with orders to arrest Klan leaders and suppress the nightriders' rampage. Those actions quelled the worst violence but gave Holden's Conservative opponents the issue they needed to win the fall election. They accused the governor of "military despotism" and compared his mobilization of the militia to Union occupation during the Civil War. That charge pulled some white voters back across the race line, while ongoing intimidation kept others away from the polls. On Election Day, Conservatives secured majority control of the state legislature. Months later, they impeached Holden and removed him from office on charges of unlawfully suspending imprisoned Klansmen's right of *habeas corpus*.¹³

¹² Escott, *Many Excellent People*, 145–51; "The Election," November 29, 1867, and "The Fastidiousness of the Convention," *Wilmington Journal* (Wilmington, N.C.), January 24, 1868; A. W. Tourgée to William Holden, July 3, 1869, *quoted in* Raper, *William W. Holden*, 160. On Klan violence generally, and the murders of Stephens and Outlaw, see Raper, *William W. Holden*, 155–66; A. J. Stedman, *Murder and Mystery: History of the Life and Death of John W. Stephens, State Senator of North Carolina, from Caswell County* (Greensboro, N.C.: Patriot Print, 1870), and Carole Watterson Troxler, "'To Look More Closely at the Man': Wyatt Outlaw, a Nexus of National, Local, and Personal History," *North Carolina Historical Review* 77 (October 2000), 403–33.

¹³ Raper, *William W. Holden*, 167–223; Jim D. Brisson, "'Civil Government Was Crumbling Around Me': The Kirk-Holden War of 1870," *North Carolina Historical Review* 88 (April 2011), 123–63; "The Civil Law Triumphant—Military Despotism Overthrown," *Old North State* (Salisbury, N.C.), August 26, 1870.

E. Constitutional Reform, Felony Disenfranchisement, and the Strict Liability Voting Law

By 1875, Conservatives – who now referred to themselves as Democrats – had gained enough seats in the General Assembly to call a convention to amend the 1868 constitution. Their objective was to reverse the political reforms instituted by the biracial Republican alliance and again write black second-class citizenship into the fundamental law of the state. They set about that work with a vengeful appraisal of the power they had seized by means of terror and intimidation. "There is now no check upon the Democratic Party in any policy it may desire to adopt," declared the *Wilmington Daily Journal*. "Nothing can now thwart its will. If there be obstructing statutes, they can be repealed; if there be an obstructing constitution, it can be changed. The Democratic-Conservative Party is now all powerful in North Carolina."¹⁴

The convention drafted a total of thirty amendments, which, in combination, were meant to roll back the democratizing effects of the 1868 constitution. For instance, one amendment granted the legislature "full power" to abolish elected local government. Others reduced the number of justices on the state Supreme Court from five to three, with an eye to weakening the sitting Republican majority; authorized the General Assembly to create new courts and alter the jurisdiction of existing lower courts; and gave lawmakers the ability to shape superior courts to their will by determining – "from time to time," and with an eye to local circumstances – whether judges would be elected by "voters of the whole State" or "voters of their respective districts." The last of these amendments was particularly important, because it provided a means to unseat Republican judges, even in parts of the state that had large or majority black populations. The editor of the *Carolina Watchman* endorsed that objective. "Is there a man," he asked, "who does not see how greatly it would tend to purify the administration of our laws, if our Judges were required to ride several circuits in regular turn? And then too, will it not be an

¹⁴ "Let Us Have a Convention," *Daily Journal* (Wilmington, N.C.), August 22, 1874; John V. Orth, "North Carolina Constitutional History," *North Carolina Law Review* 70 (Number 6, 1992), 1782, <https://unc.live/3UITYL5>.

act of simple justice to the white people in the negro circuits to relieve them from the constant burden of Radical [Republican] Judges?"¹⁵

Two amendments were designed to codify racial separation and inequality. They prohibited "all marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive," and stipulated that "the children of the white race and the children of the colored race shall be taught in separate public schools." Another pair of amendments made no explicit reference to race but would have profound future consequences for black men. The first authorized the use of chain gangs on "public works" and the hiring out of convict labor to third parties such as railroads and commercial farms. The second stripped the right to vote from any "person who, upon conviction or confession in open Court, shall be adjudged guilty of a felony, or of any other crime infamous by the laws of [the] State . . . unless such a person shall be restored to the rights of citizenship in a mode prescribed by law."¹⁶

In November 1876, voters approved the full slate of amendments, including the sweeping constraints on equal citizenship. They also elected Zebulon B. Vance to serve as governor, a post he had occupied during the Civil War. Across the state, Democrats celebrated their victory over what one newspaper editor had earlier described as the "unwise doctrine of universal equality."¹⁷

Months later, Democratic lawmakers revised state election law to bring it into compliance with the felony disenfranchisement amendment. With contempt for the biracial government of 1868-1870,

¹⁵ *Amendments to the Constitution of North Carolina, Proposed by the Constitutional Convention of 1875* (Raleigh: Josiah Turner, 1875), 11-12, 15-16, 22, 54-55, <https://bit.ly/40PvTy6>. See, by comparison, *Constitution of the State of North Carolina, 1868*, Article 4 (sections 4 (p. 29), 8 (p. 30), 15-17 (p. 33-34), and 26-27 (p. 36)) and Article 7 (p. 44), <https://bit.ly/40wdVkD>; "The Convention Question," *Carolina Watchman* (Salisbury, N.C.), August 27, 1874.

¹⁶ *Amendments to the Constitution of North Carolina, Proposed by the Constitutional Convention of 1875*, 21-27, <https://bit.ly/40PvTy6>.

¹⁷ Escott, *Many Excellent People*, 166-70; "Communism," *Enquirer* (Tarboro, N.C.), November 25, 1871.

they promised that "ignorant and corrupt rulers" would never again be "foisted" upon honest white men "by the ballots of criminals and thieves." Section 10 of the legislation denied the franchise to:

[P]ersons who, upon conviction or confession in open court, shall be adjudged guilty of [a] felony or other infamous crime by the laws of this state, committed after the first day of January, in the year of our Lord one thousand eight hundred and seventy-seven, unless they shall have been legally restored to the rights of citizenship in the manner prescribed by law.

Section 62 imposed a monetary fine and imprisonment on electors who violated this prohibition. It also held those individuals strictly liable for their actions. Prosecution, as the statute made clear, required no evidence of criminal intent:

If a person be challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any questions in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution, but if any person so convicted shall vote at any election, without having been legally restored to the rights of citizenship, **he shall be deemed guilty of an infamous crime** [emphasis added], and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding two years, or both.

Strict liability set this offense apart from other voter offenses enumerated in the revised law.

Those crimes included swearing a false oath of honesty at the time of registration; "registering or voting at any other place than [one's] *bona fide* residence"; registering in more than one precinct, or "induc[ing] another to do so"; impersonating a legally registered voter; and voting more than

once in a single election, or at more than one polling site. For conviction, each of these offenses required evidence of fraudulent intent."¹⁸

Felony disenfranchisement and the uniquely harsh strict liability voting law took direct aim at black men. For the better part of a decade, Democrats had built their political campaigns around claims that blacks had a racial proclivity for lawlessness. The Warrenton *Centennial*, a fierce champion of white rule, proclaimed what party loyalists accepted as fact: "nearly every man convicted of a felony is a negro." Black men figured in Democrats' imaginations as rapists and thieves who plundered white women's virtue and robbed white men of political authority. That credo animated what Democrats themselves described as a politics of "grievance." They lamented "the **destruction of our government** in 1868 [emphasis added]." The constitution adopted in that year "was imposed on us by force," they protested. "We look on it as a badge of servitude."¹⁹

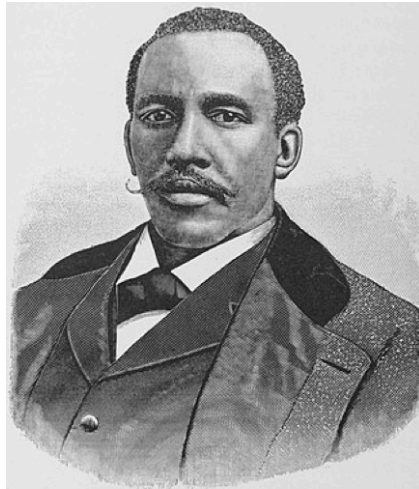
To right this perceived injustice, Democrats set out to restore "the purity of the ballot" by restricting black men's right to vote. Felony disenfranchisement was a clever means to that end. It was, on its face, race neutral, and thus escaped scrutiny under the Fourteenth and Fifteenth Amendments to the federal Constitution, which had been ratified during Reconstruction. As historian William A. Mabry observed in an early study of race and politics in North Carolina, Democrats thought of felony disenfranchisement as "discrimination not against [an individual] Negro directly but against certain characteristics of his race." Thus, it might be used to exclude significant numbers of black men from polling places based on supposition rather than proof of a criminal conviction. On Election Day, Mabry explained, "white registrars could be counted on to

¹⁸ "A Good Provision," *Charlotte Observer* (Charlotte, N.C.), January 19, 1877; *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1876-77* (Raleigh: News Publishing Company, 1877), 519-20, 531, 536-37, <https://bit.ly/3zmFe4X>.

¹⁹ Untitled editorial comment, *The Centennial* (Warrenton, N.C.), August 25, 1876; "Convention," *Daily Journal* (Wilmington, N.C.), November 24, 1874; "An Admirable Letter Upon the Convention Question," *Daily News* (Raleigh, N.C.), December 30, 1874.

charge, if the need arose, that certain Negroes seeking to [vote] had been guilty of a crime and were hence ineligible to [cast a ballot]."²⁰

At the constitutional convention, John H. Smyth, a black Republican delegate from Wilmington, had warned against precisely that sort of wholesale disenfranchisement. "The action you will take . . . is



John H. Smyth. William J. Simmons, *Men of Mark: Eminent, Progressive, and Rising* (1887).

foreshadowed," he lectured Democrats. "Your purpose is to take from the negro" the right to vote, and with it "the right of representation." In that circumstance, blacks would lose the means to defend their liberty, and whites, with the machinery of government and the judiciary firmly in hand, would make the "most honest [black] man . . . a thief . . . and prove him so to his unwilling satisfaction." Smyth denounced the Democrats' purpose as "villainous," "cruel and most unjust," a "crime against religion and morals." "I am aware," he declared, "and you are aware of the

fact, however reluctant you may be to admit it, that the general conduct of . . . the negro does not justify this usurpation of liberties." Smyth appealed to the "great principles" on which the American Republic had been founded and stated to his adversaries: "The preamble to the Constitution of the United States, and the instrument itself, and our notions and conceptions of Democracy, are all opposed to this system of disenfranchisement."²¹

²⁰ Untitled commentary on the constitutional convention, *Daily News* (Raleigh, N.C.), October 8, 1875; William A. Mabry, *The Negro in North Carolina Politics Since Reconstruction*, Historical Papers of the Trinity College Historical Society, series 23 (Durham: Duke University Press, 1940), 16-17.

²¹ "Speech Delivered by Mr. J. H. Smyth, of New Hanover, on Report of Committee on Suffrage and Eligibility to Office," *Daily Constitution* (Raleigh, N.C.), October 8, 1875; "Constitutional Convention," *Wilmington Morning Star* (Wilmington, N.C.), October 8, 1875. On Smyth's life and career, see "Hon. John H. Smyth, LL.B., LL.D.," in William J. Simmons, *Men of Mark: Eminent, Progressive, and Rising* (Cleveland: Geo. M. Rewell and Company, 1887), 372-77; "John Henry Smyth, LL.D.," in D. W. Culp, *Twentieth Century Negro Literature, or A Cyclopedia of Thought on Vital Topics Relating to the American Negro* (Naperville, IL: J. L. Nichols and Company, 1902), 434; W. P. Burrell and D. E. Johnson Sr., *Twenty-Five Years History of the Grand Fountain of the United Order of True Reformers, 1881-1905* (Richmond: Grand Fountain, United Order of True Reformers, 1909), 368.

F. Disqualified for Life

Smyth's objections were borne out by an expanding system of state incarceration that bound black men to forced labor and effectively disenfranchised them for life. One of the constitutional amendments ratified in 1876 expressly "authorize[d] the employment of . . . convict labor on public works, or highways, or other labor for public benefit." That provision passed muster under the Thirteenth Amendment to the U.S. Constitution, which abolished slavery but permitted "involuntary servitude" as a punishment for crime. In North Carolina, as in other southern states, that loophole allowed for the development of a penal system that generated income for the state and provided a ready source of cheap, tractable labor for railway construction.²²

The report from the state penitentiary's board of directors for the 1878-1880 biennium provides insight into how the system worked as an economic enterprise and as an instrument of racial control. The prison had a stable population of roughly 1,000 inmates from year to year. Of the 889 men who were newly incarcerated during the reporting period, 88 percent (779) were black. By comparison, black men constituted only 38 percent of the state's total male population. These imprisoned men, black and white alike, were also poor; nearly three-fourths of them had made their living as a common laborer. All prisoners, except for a small number who were aged and infirm, were assigned to hard labor. Whites mainly worked in the penitentiary's brickyard and shops, while blacks were mainly hired out to the state-owned Western North Carolina Railroad and other, smaller railway companies. These inmates produced a "total value to the state" of more than \$290,000.²³

²² *Amendments to the Constitution of North Carolina, Proposed by the Constitutional Convention of 1875* 24-25, <https://bit.ly/40PvTy6>. For comparative purposes, see Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008).

²³ "Report of the President of the Board of Directors of the North Carolina Penitentiary," Document 8, in *North Carolina Executive and Legislative Documents, Session 1881* (Raleigh: News and Observer, 1881), 5-7, 15, 29, 31-33, <https://bit.ly/3KpcYol>; *Report and Testimony of the Select Committee of the United States Senate to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States*, part 1 (Washington, D.C.: Government Printing Office, 1880), 131. For state population statistics, see U.S. Department of the Interior, Census Office, 1880 Census, vol. 1, *Statistics of the Population of the United States at the Tenth*

The majority – 85 percent – of all the newly incarcerated prisoners (including 44 women) had been convicted of larceny, often a crime of poverty and desperation. At the time, North Carolina law made no distinction between grand and petty larceny, so even minor theft was punishable by imprisonment. In 1880, Charles N. Otey, a black attorney who had practiced in Raleigh for many years, told a U.S. Senate committee that in North Carolina, "if a colored man steals a chicken, he is pretty liable to be sent to the penitentiary," and "unless [he is] pardoned, it takes away [his] right to vote." That practice was fundamentally unjust, Otey explained: "Many of the colored people are very poor and have nothing to live on" – their poverty "compelled" them to steal.²⁴

The imprisoned black men had little chance of ever regaining the franchise. After being released, but no sooner than four years after conviction, they could file a petition in superior court to have their citizenship rights restored. Most, however, were minimally literate; few could have afforded legal counsel; and the courts, firmly in the hands of a partisan Democratic judiciary, were likely to be prejudiced against their pleas. Former convicts were also certain to face challenges to their eligibility at the polls, whatever the status of their citizenship rights might be. Surviving records from Granville and Iredell Counties suggest that it was common practice for local Democratic Party committees to circulate lists of ex-convicts in advance of Election Day. The Iredell list, compiled in the late 1880s, included 122 men, only 7 of whom were white. Of the 115 remaining black men, all but 11 had been convicted of larceny. The Granville list, which appears to have been drawn up in 1885 or shortly thereafter, did not

Census, Table I, Population of the United States by States and Territories, <https://bit.ly/3mm8gyl>; Table XVIII, Sex of the White Population, with General Nativity, <https://bit.ly/40TfTM2>; Table XIX, Sex of the Colored, Chinese and Japanese, and Civilized Indian Population, with General Nativity, <https://bit.ly/40TfTM2>.

²⁴ "Report of the President and Board of Directors of the North Carolina Penitentiary," 36; *Acts Passed by the General Assembly of the State of North Carolina at the Session of 1833-34* (Raleigh: Lawrence and Lemay, 1834), 38 (Chapter 20), <https://bit.ly/42YySpN>; William H. Battle, *Battle's Revisal of the Public Statutes of North Carolina, Adopted by the General Assembly at the Session of 1872-73* (Raleigh: Edwards, Broughton, and Company, 1873), 297, <https://bit.ly/3GajInP>; *Report and Testimony of the Select Committee of the United States Senate to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States*, part 1, 117, 132, <https://bit.ly/3KK2tw0>.

identify individuals by race, but it otherwise mirrored the Iredell roster: Of 184 men, 151 had been imprisoned for larceny. The list's starting date was equally revealing: March 12, 1877, the day the General Assembly had enacted felony disenfranchisement. Lest there be any doubt about the purpose of these lists, the chairman of the Democratic Party in Iredell made it clear: "All Democrats," he declared, "will see that none of these convicts vote."²⁵

3		IREDELL COUNTY.	
Williams, George,	colored, larceny, Fall	Term, S. C., '78	
Williams, Ed.,	" " Fall	" " '78	
Williams, Joe,	" " Spring	" " '78	
Weaver, James,	" " " "	" " '78	
Wesson, James,	" " " "	" " '78	
Williams, James,	" " " "	" " '78	
Wilson, Augustus,	" " " "	" " '78	
Walker, John,	" " " "	" " '78	
All Democrats will see that none of these convicts vote. Forbidden by order of the Democratic Executive Commit- tee of Iredell county. T. A. WATTS, Chairman.			
LIST OF PERSONS CONVICTED OF FELONY AND DISQUALIFIED FROM VOTING:			
Adams, Floyd,	colored, larceny, Spring Term, S. C., '77		
Alexander, Frank,	" " " " " " '78		
Anthony, A. G.,	" " " " " " '78		
Allison, Dave,	" " " " " " '79		
Allison, M.,	" " " " " " '79		
Allison, Alf,	" " " " " " '82		
Allison, Columbus,	" " " " " " '82		
Barber, Wm.,	" " " " " " '79		
Barnes, David,	" " " " " " '79		
Barnes, Cyrus,	" " " " " " '79		
Bailey, Sam,	" " " " " " '79		
Blackadder, W. F.,	white, " " " " " " '83		
Bass, Charles,	" " " " " " '88		
Calhoun, John,	colored, " " " " " " '77		
Campbell, Tom,	" " " " " " '79		
Carson, Les,	" " " " " " '79		
Crocker, David,	" " " " " " '84		
Christie, James,	white, " " " " " " '86		
Cutler, William,	colored, " " " " " " '86		
Carson, Frank,	" " " " " " '87		
Carson, Les,	" " " " " " '87		
Gale, James A.,	white, " " " " " " '87		
Gander, Will,	colored, " " " " " " '88		
Cornelius, Laif,	" " " " " " '80		
Clark, Eli,	" " " " " " '81		
Chase, Millard,	white, " " " " " " '81		

2		3	
Campbell, Dave,	colored, larceny, May Term, I. C., '83	Martin, Wash,	colored, larceny, Spring Term, S. C., '85
Dalton, Alfred,	" " " " " " '77	Morrison, Fred,	" " " " " " '86
Dalton, Nicholas,	" " " " " " '78	Moore, Will,	" " " " " " '87
Diggs, Sam,	" " " " " " '81	Murphy, S. B.,	white, " " " " " " '88
Ervin, Anderson,	" " " " " " '77	Moore, Adam,	colored, " " " " " " '88
Ervin, James,	white, " " " " " " '82	Moore, Tom,	" " " " " " '80
Edwards, Henry,	" " " " " " '80	Mayhew, Billy,	" " " " " " '81
Fulmer, Henry,	" " " " " " '85	Moore, Marshall,	" " " " " " '81
Foster, Charles,	rape, " " " " " " '85	McElwee, Amos,	" " " " " " '83
Foster, Bert,	" " " " " " '87	Nantz, Frank,	" " " " " " '86
Gillette, Frank,	" " " " " " '77	Nash, Albert,	" " " " " " '79
Gillette, Sewell,	" " " " " " '78	O'Brien, Frank,	" " " " " " '87
Garris, Irvin,	" " " " " " '80	Pharr, Isaac,	" " " " " " '87
Gillette, Pink,	" " " " " " '83	Powers, John,	forger, " " " " " " '88
Houston, Peter,	" " " " " " '77	Redman, George,	" " " " " " '77
Hadley, Robert,	" " " " " " '79	Rhodes, James,	" " " " " " '74
Howard, Pink,	" " " " " " '80	Ramsey, Dave,	" " " " " " '85
Hickman, Dock,	" " " " " " '80	Rickett, William,	" " " " " " '86
Hall, S.,	" " " " " " '79	Rhodes, John W.,	" " " " " " '85
Holmes, Riley,	" " " " " " '81	Reeve, Sam,	" " " " " " '85
Hall, Calvin,	" " " " " " '82	Summers, John,	" " " " " " '85
Johnson, Edmund,	" " " " " " '77	Summers, Bangs,	" " " " " " '85
Johnson, Henry,	" " " " " " '78	Summers, Andy,	" " " " " " '83
Jarret, Richard,	" " " " " " '86	Simmon, Robert,	" " " " " " '82
Johnson, Lewis,	" " " " " " '87	Stideman, John,	" " " " " " '81
Johnson, Henry,	" " " " " " '81	Summers, Elias,	" " " " " " '82
Johnson, Bob,	" " " " " " '82	Steele, Young,	" " " " " " '86
Johnson, Robert,	" " " " " " '82	Sharpe, Ab.,	" " " " " " '86
Knox, John,	" " " " " " '86	Sharpe, Miles,	" " " " " " '87
Knox, John,	" " " " " " '87	Stevens, Loda,	" " " " " " '87
Kenton, Ward,	" " " " " " '87	Smith, Ben,	" " " " " " '87
Kinder, Robert P.,	" " " " " " '88	Smith, Dal,	" " " " " " '87
Lawrence, Joe,	" " " " " " '87	Stevenson, Joe,	" " " " " " '79
Lawsley, J. A.,	white, larceny, May	Stanton, Martin,	" " " " " " '79
Miller, Simon,	colored, " " " " " " '77	Steele, Henry,	" " " " " " '80
Murphy, James,	" " " " " " '79	Steele, Sam,	" " " " " " '81
Montgomery, James,	" " " " " " '80	Tuck, Ben,	" " " " " " '86
Mock, John,	" " " " " " '82	Tea, George,	" " " " " " '82
McKnight, Charles,	" " " " " " '84	Williams, Isaac,	" " " " " " '77
Murphy, Gus,	" " " " " " '84	Williams, George,	" " " " " " '77
Murdock, Pink,	" " " " " " '84	Woodliffe, B. W.,	" " " " " " '78

Disqualified voters list, Iredell County, ca. 1888

²⁵ *Battle's Revisal*, 481; "Iredell County, List of Persons Convicted of Felony and Disqualified from Voting," and "List of Persons Convicted of Felony or Other Infamous Crimes in Granville County, Since March 12, 1877," North Carolina Collection, Wilson Library, University of North Carolina at Chapel Hill, Chapel Hill, N.C.

For most black men with a record of imprisonment, the risk of a confrontation at the ballot box – perhaps accompanied by violence – would likely have been reason enough to stay away. After all, there was likely to be even more trouble for those who persisted. When they cast their ballots, these men would have made themselves guilty *prima facie* of a felonious crime, and subject to re-imprisonment if their rights had not been restored, which as noted above was complicated. In this way, felony disenfranchisement and the strict liability consequences of voting while ineligible worked as John Smyth had foreseen. Together, they had the power to "make a man infamous and keep him so, virtually" – that is, for life, on account of his race as much as his crime.²⁶

VII. Fusion Politics, Inclusive Democracy, and a New Campaign for White Supremacy

A. Economic Hardship and a Biracial Republican-Populist Alliance

After conservative Democrats' return to power in the mid to late 1870s, North Carolina politics settled into an uneasy *détente*. In every election from 1876 through 1892, Democratic candidates polled no more than 54 percent of the gubernatorial vote, and between 1877 and 1900, forty-three black lawmakers served in the state House of Representatives, eleven were elected to the state Senate, and four held office in the U.S. House of Representatives. So long as black men had the right to vote, white Republicans had reason to court black allies and the two-party system remained competitive. Indeed, it was reasonable to believe that under the right circumstances political battle lines might again be defined more by economic interests than by racial ideology. The rise of commercial agriculture and the beginnings of industrialization provided the shock that once more produced that alignment.²⁷

²⁶ "Speech Delivered by Mr. J. H. Smyth, of New Hanover, on Report of Committee on Suffrage and Eligibility to Office," *Daily Constitution* (Raleigh, N.C.), October 8, 1875.

²⁷ Jeffrey J. Crow, "Cracking the Solid South," in Lindsey S. Butler and Alan D. Watson, eds., *The North Carolina Experience* (Chapel Hill: University of North Carolina Press, 1984), 335; Escott, *Many Excellent People*, 181. On North Carolina's black Congressmen, see Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The "Black Second" Congressional District* (Baton Rouge: Louisiana State University Press, 1978).

Economic change swept through rural North Carolina in the decades after Reconstruction, as an emerging merchant class pressed freedmen and white yeoman farmers out of semi-subsistence into commercial production. The result was the notorious system of sharecropping that turned once-independent whites into debtors and locked blacks in virtual peonage. Each spring, sharecroppers took out loans in the form of the seeds, tools, and supplies they needed to plant the year's crop. To ensure repayment – often at interest rates as high as 50 percent – merchants demanded that their clients grow cotton or tobacco, which could be sold readily for cash. As farmers produced more of these cash crops, prices fell and rural families spiraled downward into debt. Whites who owned their land sometimes managed to escape this trap, but blacks – the vast majority of whom were landless and had to pay rent to landlords as well as interest to merchants – had no recourse. Black sharecroppers often ended the agricultural year with no profit and were unable to accumulate wealth. This process of immiseration repeated itself from one generation to the next and produced enduring poverty well into the mid-twentieth century.²⁸

Desperation and resentment over a new economic order that rewarded manipulators of credit more than cultivators of the land led farmers into revolt. Whites joined the Southern Farmers Alliance, which was first organized in Texas and then spread throughout the South by means of local chapters, while blacks affiliated with a parallel organization, the Colored Farmers Alliance. In 1892, these groups sought redress through the political process. Blacks remained true to the Republican Party, while whites, calling themselves Populists, bolted from the Democratic Party – controlled by the state's economic elite – to a new national People's Party. The results were disastrous for Republicans and Populists alike. In the governor's race, the Democratic candidate won 48.3 percent of the vote, while the Republican nominee

²⁸ Adrienne Monteith Petty, *Standing Their Ground: Small Farmers in North Carolina Since the Civil War* (New York: Oxford University Press, 2013), 29-54; Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894-1901* (Chapel Hill: University of North Carolina Press, 1951), 20-29.

received 33.8 percent and the Populist trailed with 17.04 percent. These numbers contained a lesson that was obvious to voters less than a generation removed from the biracial politics of Reconstruction. Divided, the dissidents were all but certain to lose; united, they could challenge Democratic power.²⁹

In 1894 and 1896, Republicans and white Populists forged a political partnership under the banner of "Fusion" and jointly endorsed state and local candidates. The logic of that move was clear and compelling. As one Populist explained, "We can join with others who agree with us and win a great victory for both whites and blacks." This sentiment also appealed to skilled artisans and factory laborers, black and white, who during the 1880s had rallied to the Knights of Labor and embraced the organization's call for interracial cooperation and class solidarity. On Election Day, 1894, Fusion candidates won a two-thirds majority in the General Assembly and three of five seats on the state Supreme Court. Two years later, they swept up three-fourths of the seats in the legislature and secured a four-to-one majority on the high court. Daniel L. Russell, a white Republican, also won election to the governor's office. Fusion insurgencies arose in other southern states, but only in North Carolina did a biracial alliance take control of all three branches of government.³⁰

²⁹ Deborah Beckel, *Radical Reform: Interracial Politics in Post-Emancipation North Carolina* (Charlottesville: University of Virginia Press, 2011), 113-77; Melton McLaurin, "The Knights of Labor in North Carolina Politics," *North Carolina Historical Review* 49 (July 1972), 298-315; *Guide to U.S. Elections*, 6th Edition, vol. 2 (Washington, D.C.: CQ Press, 2010), 1638.

³⁰ "Will Men Bolt Their Convictions?" *The Caucasian* (Clinton, N.C.), March 12, 1896; Crow, "Cracking the Solid South," 333-42; Edmonds, *Negro and Fusion Politics*, 34-66. Three Fusion candidates won election to the state Supreme Court in 1894: David M. Furches, Walter T. Faircloth, and Walter A. Montgomery. In 1896, Republican Robert M. Douglas replaced Democrat Alfonso A. Avery, who had been a leader of the Klan in western North Carolina during Reconstruction. See *Cases Argued and Determined in the Supreme Court of North Carolina, February Term, 1895, North Carolina Reports*, vol. 116 (Raleigh: Commercial Printing Company, 1922), iii; *Cases Argued and Determined in the Supreme Court of North Carolina, February Term, 1897, North Carolina Reports*, vol. 120 (Raleigh: Commercial Printing Company, 1917), iii; "Alphonso Calhoun Avery," NCPedia, <https://bit.ly/3JtxmUV>; "Robert Martin Douglas," NCPedia, <https://bit.ly/40xkaVc>; "William T. Faircloth," NCPedia, <https://bit.ly/426mmEs>; "Walter David Moffatt Furches," NCPedia, <https://bit.ly/3ZGQcxq>; "Walter Alexander Montgomery," NCPedia, <https://bit.ly/3YDT3WS>.

B. "For the Good of the Whole"

A commitment to fair play and equitable governance animated the 1895 and 1897 Fusion legislatures. Lawmakers capped interest rates on all forms of indebtedness at 6 percent, a godsend for cash-strapped farmers who relied on credit to survive. They also shifted the weight of taxation from individuals to corporations; mandated equal per capita spending for the education of black and white children; and restored elected local government, a postwar reform that Democrats had reversed after their return to power in the 1870s. In addition, the Fusion legislatures made new investments in public services that Democrats had starved for resources, including the state penitentiary, state schools for deaf and blind children, a state-supported home for black orphans, and state mental asylums.³¹

These measures affirmed the values that black and white delegates had written into the state's 1868 Reconstruction-era constitution. That document, the core of which remains in force today, opened by invoking the Declaration of Independence and connecting the ideals of the American Republic to the economic and political struggles set in motion by Confederate defeat and the abolition of slavery. Bold type highlights language added by the framers of 1868: "We do declare . . . that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, **the enjoyment of the fruits of their own labor**, and the pursuit of happiness. . . . That all political power is vested in, and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted **solely for the good of the whole**." Fusion lawmakers in North Carolina, historian Morgan Kousser has observed, created "the most democratic" political system "in the late nineteenth-century South." This system was not destined to last, as Democrats would again

³¹ *Public Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1895* (Winston: M. I. and J. C. Stewart, 1895), Chaps. 69, 73, 116, 135, 174, 183, 219, 275, 348, <https://bit.ly/43dwsUu>; *Public Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1897* (Winston: M. I. and J. C. Stewart, 1897), Chapt. 108, <https://bit.ly/40zRZor>.

seek to cause the destruction of black voting rights, making the "good of the whole" into the injustice of white supremacy.³²

C. Terror and Retrenchment, Redux

As they approached the election of 1898, Democrats once again made white supremacy their rallying cry and vigilante violence their most potent political weapon. They dodged the economic and class issues that held the Fusion coalition together and appealed to the specter of black criminality and "negro domination." In their official party handbook, Democrats accused their Fusion opponents of mustering black felons to steal elections. Those "ex-convicts," Democrats warned, "were of a roving disposition, moved from place to place, and could readily conceal their identity." That "made it easy for them, with little danger of detection, to register and vote at several different places." Democrats claimed that Fusion "bosses" took such effective advantage of "these facts" that "not less than ten thousand negroes [had] fraudulently registered and voted in the general election in 1896." Thus, were the "doors of fraud . . . thrown wide open" to criminals who, "under the laws and Constitution of the State, [had] no right to vote at all." In these circumstances, Democrats exclaimed, respectable white men were left with no defense, "save what their courage and Anglo-Saxon manhood [might] give them."³³

Across the state, Democratic leaders called that manhood to action. "This is a white man's country," they cried, "and white men must control and govern it." To that end, county captains organized White Government Unions and encouraged the party faithful to don the paramilitary uniform known as the "red shirt," a symbol of the blood sacrifice of the Confederacy and the late-nineteenth-

³² *Constitution of the State of North Carolina, 1868*, Art 1, § 1, <https://unc.live/3KrHQVx>; J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974), 183; <https://unc.live/3Kp9LFh>.

³³ State Democratic Executive Committee of North Carolina, *The Democratic Hand Book, 1898* (Raleigh: Edwards and Broughton, 1898), 38, 84, 88, <https://unc.live/3Kp9LFh>.

century equivalent of the hooded robes worn by Klansmen during Reconstruction. At Democratic rallies and at polling places, these armed vigilantes engaged in open intimidation of voters. A Republican newspaper in Winston reported that "there were crowds of men who gathered around the polls in each ward and . . . boldly drove [away] a large per cent of the colored Republican voters and a good many white voters [as well]." The Democrats' determination to defeat the Fusion alliance at any cost was revealed most starkly in Wilmington, where armed white men marauded through black neighborhoods, murdered as many as thirty black residents, and in the only domestic coup d'état in American history, drove the city's biracial government from office.³⁴



Armed Red Shirts in Laurinburg, and their uniform. Courtesy of the North Carolina State Archives and the North Carolina Museum of History.

D. Constitutional Disenfranchisement

On Election Day, Democrats regained majority control of the General Assembly. Restored to power, they moved decisively to cast off – once and for all – the "curse of negro domination." In the 1899 legislative session, the new majority drafted an amendment to the state constitution that would effectively strip all black men of the right to vote. The amendment stipulated that

³⁴ *Democratic Hand Book, 1898*, 38, <https://unc.live/3Kp9LFh>; H. Leon Prather Sr., "The Red Shirt Movement in North Carolina, 1898-1900," *North Carolina Historical Review* 62 (April 1977), 174-84; "A Dangerous Element," *Union Republican* (Winston, N.C.), November 10, 1898. On events in Wilmington, see David Zucchino, *Wilmington's Lie: The Murderous Coup of 1898 and the Rise of White Supremacy* (New York: Atlantic Monthly Press, 2020); LeRae Sikes Umfleet, *A Day of Blood: The 1898 Wilmington Race Riot* (Raleigh: North Carolina Office of Archives and History, 2009).

before registering to vote, prospective electors would have to prove their ability to "read and write any section of the Constitution in the English language." It also included a grandfather clause that exempted from the literacy test all adult males who had been eligible to vote or were lineal descendants of men who had been eligible to vote on or before January 1, 1867. That was a magic date, because it preceded the limited right to vote given to black men under the first Military Reconstruction Act, passed in March 1867.³⁵

The proposed amendment would also disenfranchise male citizens who failed to pay a capitation tax – otherwise known as a poll tax – levied in accordance with Article V, Section 1, of the state constitution. This link between payment of the capitation tax and the right to vote was a new impediment, and – as with the grandfather clause – calendaring was the key to its differential impact on blacks. The draft amendment required that electors pay the tax before the first day of May, prior to the election in which they intended to vote. This was planting time, when black sharecroppers, who generally labored under the most onerous contracts with white landlords, were unlikely to have the necessary cash on hand.³⁶

Democrats in the General Assembly used their control over election law to boost the odds that their constitutional amendment would win popular approval. They targeted black men with criminal convictions by re-enacting, without significant changes, both felony disenfranchisement and strict liability voter prosecution. Section 18 of the election law they passed in 1899 denied the franchise to:

³⁵ Escott, *Many Excellent People*, 258; State Democratic Executive Committee of North Carolina, *Democratic Hand Book*, 1898, 38, <https://unc.live/3Kp9LFh>; *Public Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1899* (Raleigh: Edwards and Broughton and E. M. Uzzell, 1899), Chapt. 218, <https://bit.ly/3G4O4Yv>. See also *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Adjourned Session of 1900* (Raleigh: Edwards and Broughton and E. M. Uzzell, 1900), Chapt. 2, for minor revisions of the amendment, <https://bit.ly/3K5VoVj>.

³⁶ *Public Laws and Resolutions of the State of North Carolina*, 1899, chapt. 218, <https://bit.ly/3G4O4Yv>.

[P]ersons who, upon conviction or confession in open court, shall be adjudged guilty of [a] felony or other infamous crime by the laws of the state, committed after the first day of January, in the year of our Lord one thousand eight hundred and seventy-seven, unless they shall have been legally restored to the rights of citizenship ~~in the manner prescribed by law~~ [revision of the 1877 text struck through].

Section 72 again imposed a monetary fine and imprisonment on electors who violated this prohibition, and held them strictly liable for their actions:

If any person be challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any questions in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution, but if any person so convicted shall vote at ~~any~~ the election without having been legally restored to the rights of citizenship he shall be ~~deemed~~ guilty of an infamous crime and ~~on conviction thereof, shall be~~ punished by a fine not exceeding one thousand dollars or imprisonment at hard labor not exceeding two years or both [revisions struck through and underscored].

These provisions, Democrats explained, would eliminate "negro ex-convicts," who allegedly had "registered and voted galore" under Fusion rule. In the same legislation, they also loosened restrictions on challenging voters at the polls, purged Populists and Republicans from the voter rolls by ordering an "entirely new registration" in advance of the next election, and ended the practice of accommodating illiterate voters by printing ballots on colored paper marked with party insignia.³⁷

³⁷ Ibid., 665 (Chapt. 507, § 18), 681 (Chapt. 507, § 72); State Democratic Executive Committee of North Carolina, *Democratic Hand Book*, 1898, 84, 88, <https://unc.live/3Kp9LFh>. The 1899 election law reversed these and other reforms put in place by the Fusion legislatures of 1895 and 1897. See *Public Laws and Resolutions of the State of North Carolina*, 1899, chapt. 16; *Public Laws and Resolutions*, 1895, Chapt. 159, <https://bit.ly/3Gn7UP5>; *Public Laws and Resolutions*, 1897, Chapt. 185.

With these rules in place, a Democratic victory in the 1900 election seemed very likely. Their gubernatorial candidate, Charles B. Aycock, made black disenfranchisement the centerpiece of his campaign. On the stump, he decried black "crime and lawlessness" and praised the armed Red Shirts who were a mainstay at his rallies. The beleaguered Fusion opposition was no match for these appeals to white supremacy and threats of deadly violence. On Election Day, both Aycock and the disenfranchisement amendment to the state constitution won by a 59 to 41 percent margin.³⁸

When the General Assembly convened in 1901, Democrats secured their victory by passing a law to implement the constitutional amendment. The legislation stipulated that as a qualification for registering to vote, male citizens would be required to demonstrate their ability to read and write "to the satisfaction" of a county registrar. That standard gave local election officials near-limitless authority to decide who would pass a literacy test and be granted – or denied – the right to cast a ballot.³⁹

VIII. From Jim Crow to Civil Rights

A. Jim Crow's Regime

Having regained command of the machinery of government, Democrats began implementing what one scholar has termed their "reactionary revolution." Black subjugation was at the head of their agenda. Over time, they, like their counterparts in other southern states, developed an elaborate regime of law and custom that came to be known as Jim Crow. The name was taken from blackface characters in nineteenth-century minstrel shows. Jim Crow was more than an expression of prejudice and

³⁸ Robert Diggs Wimberly Connor and Clarence Hamilton Poe, eds. *The Life and Speeches of Charles Brantley Aycock* (Garden City, N.Y.: Doubleday, Page, and Company, 1912), 81; Prather, "Red Shirt Movement," 180–83; *Guide to U.S. Elections*, vol. 2, 1638; Kousser, *Shaping of Southern Politics*, 193.

³⁹ *Public Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1901* (Raleigh: Edwards and Broughton and E. M. Uzzell, 1901), Chapt. 89, <https://bit.ly/42X3O9W>.

discrimination; it was a system of power and plunder, defended by both state and extra-legal violence, that condemned generations to poverty, illiteracy, sickness, and early death.⁴⁰

Under this regime, felony disenfranchisement and strict liability voter prosecution became moot concerns. The literacy test provided a more comprehensive and highly effective means of suppressing the black vote. In that context, there was little additional advantage to be gained by tracking and prosecuting blacks with felony convictions who voted illegally. In 1931, the General Assembly did re-enact the strict liability statute, but that was done as a perfunctory matter within a broader revision of election law. There was only one substantive change, which was made to acknowledge woman suffrage, established in 1920 by the Nineteenth Amendment to the federal Constitution. The updated statute read as follows (with the revision struck through and underlined):

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's Prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the Court. It shall be unlawful . . . [f]or any person convicted of a crime which excludes ~~him~~ the person from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.

Aside from this legislative action, policing the voting behavior of felony offenders remained off the public agenda, even in the post-World War II years, as black citizens made small, incremental gains in adding their names to voter registration rolls. In 1957, a news item tucked away in a Sunday edition of

⁴⁰ Kousser, *Shaping of Southern Politics*, 261; "Who Was Jim Crow?" Jim Crow Museum, Ferris State University, <https://bit.ly/3JtnfQ3>. On Jim Crow as a system of plunder, see Ta-Nehisi Coates, "The Case for Reparations," *Atlantic* (June 2014), <https://bit.ly/2NtghNz>. "Plunder," Coates writes, "had been the essential feature of slavery . . . but practically a full century after the Civil War and the abolition of slavery, the plunder – quiet, systemic, submerged – continued."

the *Charlotte Observer* told the story. The article noted that "most people" knew nothing about felony disenfranchisement, and "despite the fact that felony convictions roll[ed] monthly from the Superior Courts all over the state, [it was] nobody's job" to inform local election officials. There was "no administration set up for that," the chair of the State Board of Elections explained, "because there [weren't] enough convictions to justify it." "Usually," a superior court judge observed, convicted felons would "just go ahead and vote, and nobody kn[ew]" – or cared – much about it.⁴¹

This inattention persisted well into the modern civil rights era. After passage of the Voting Rights Act of 1965, black voter registration rose significantly, from 36 to 52 percent of the eligible population between 1962 and 1980. Even so, there is no evidence that state or local election officials stepped up efforts to identify people with felony convictions who voted without prior restoration of their citizenship rights. The reason is unclear, though the Voting Rights Act itself may offer a clue. Forty of North Carolina's one hundred counties were covered by Section 5 of the act, which required federal "preclearance" of "changes in election practices and procedures." The rule served as a safeguard against both "discriminatory purpose [and] effect." Given this surveillance, it is plausible that active voter prosecution under the strict liability statute would have provoked further federal intervention, thus outweighing any potential for slowing black civil rights advances.⁴²

B. Failed Efforts to Reform Felony Disenfranchisement and the Strict Liability Voting Law

Felony disenfranchisement and strict liability voter prosecution became issues of public debate only briefly, between 1971 and 1973. In back-to-back legislative sessions, Representative Joy Johnson,

⁴¹ *Public Laws and Resolutions Passed by the General Assembly at Its Session of 1931* (Charlotte: Observer Printing House, 1931), 443-44, <https://bit.ly/40OKx8Q>; "Extra Penalty for Felons: They Lose the Right to Vote," *Charlotte Observer* (Charlotte, N.C.), January 13, 1957.

⁴² Anita Earls, Emily Wynes, and LeeAnne Quatrucchi, "Voting Rights in North Carolina: 1982-2006," *Southern California Review of Law and Social Justice* 17 (Spring 2008), 580, 583. On Section 5 of the Voting Rights Act, see "About Section 5 of the Voting Rights Act," U.S. Department of Justice, <https://bit.ly/3JaWOND>; "Jurisdictions Previously Covered by Section 5," U.S. Department of Justice, <https://bit.ly/3LhadX9>.

one of only three black lawmakers in the General Assembly, introduced bills that would have effectively nullified the strict liability voting law by requiring the automatic restoration of citizenship rights when a person convicted of a felony was released from prison.⁴³

Johnson was a Democrat – a reflection of the political realignment that had begun in the 1930s, as blacks abandoned the party of Lincoln to support Franklin D. Roosevelt's New Deal. That realignment would accelerate in the 1980s and 1990s, as conservative whites switched their loyalty to the Republican Party, but in Johnson's time the process was still far from complete. Most of his fellow Democrats – including many who considered themselves "moderates" on civil rights issues – opposed his call for reform. They amended Johnson's bills to maintain significant barriers to the restoration of citizenship rights, and in doing so, kept the door open to strict liability voter prosecution. The legislation that finally emerged in 1973 provided that "[a]ny person convicted of a crime, whereby the rights of citizenship are forfeited," would have those rights restored only in one of three narrow circumstances:

- (1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Board of Juvenile Correction, of a probationer by the State Probation Commission, or of a parolee by the Board of Paroles; or of a defendant under a suspended sentence by the Court.
- (2) The unconditional pardon of the offender.
- (3) The satisfaction by the offender of all conditions of a conditional pardon.

Advocates for these stipulations argued that they were necessary "as a deterrent to further crime."

Other considerations may well have gone unspoken, in public if not in private. The lawmakers who approved the amendment of Johnson's bills had also gerrymandered legislative districts in 1966 and 1971 in ways that were intended to guarantee, as one lawmaker explained, that "no Negro could get

⁴³ On Johnson, see Milton C. Jordan, "Black Legislators: From Political Novelty to Political Force," *North Carolina Insight* (December 1989), 41, 43; "Baptist Minister Announces for the House," *Citizen* (Red Springs, N.C.), February 18, 1970.

elected to the General Assembly." In the end, North Carolina's strict liability voting law remained intact and off the legislative agenda.⁴⁴

While lawmakers debated Johnson's bills, another challenge to felony disenfranchisement made its way through the federal courts. The case was filed by Fred Fincher, who had a record of felony conviction. Fincher argued that Scotland County election officials had violated the equal protection clause of the Fourteenth Amendment when they prevented him from registering to vote. In 1973, the U.S. Supreme Court affirmed a lower court ruling that "while it might be desirable from a correctional point of view to give felons the right to vote . . . the states are not required to do so."⁴⁵

Felony disenfranchisement and the strict liability voting law laid dormant for another forty years. When they re-emerged in the 2010s, circumstances bore a striking resemblance to those of 1877, when North Carolina's strict liability statute was first enacted: Politics had become sharply polarized around issues of race and equal citizenship, and conservative white lawmakers were determined to limit black political participation. Both developments were fueled by the black electoral gains that judicial enforcement of the Voting Rights Act had made possible.

⁴⁴ *Journal of the House of Representatives of the General Assembly of the State of North Carolina, Session 1971* (Winston-Salem: Winston Printing Company, [1971]), 169, 1216, 1272, 1407, <https://bit.ly/40wRwDv>; *Journal of the House of Representatives of the General Assembly of the State of North Carolina, Session 1973* (Winston-Salem: Winston Printing Company, [1973]), 38, <https://bit.ly/3ZzvtLj>; *Journal of the Senate of the General Assembly of the State of North Carolina, First Session 1973* (Winston-Salem: Winston Printing Company, [1973]), 341, <https://bit.ly/3IZYPoo>; An Act to Provide for the Automatic Restoration of Citizenship, North Carolina General Assembly, 1973 Session, <https://bit.ly/3JxFTGn>; "Young Drug Offenders Lose Citizenship," *Charlotte News* (Charlotte, N.C.), October 28, 1972; James L. Leloudis and Robert R. Korstad, *Fragile Democracy: The Struggle Over Race and Voting Rights in North Carolina* (Chapel Hill: University of North Carolina Press, 2020), 81-83; "Numbered Seats Measure Given House Approval," *News and Observer* (Raleigh, N.C.), June 13, 1967. On race and political realignment, see Eric Schickler, *Racial Realignment: The Transformation of American Liberalism, 1932-1965* (Princeton: Princeton University Press, 2016).

⁴⁵ *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972), *aff'd* 411 U.S. 961 (1973).

IX. Race and Retrenchment

A. Echoes of Fusion – A New Biracial Progressive Alliance

The 1984 U.S. District Court ruling in *Gingles v. Edmisten* marked a watershed in modern North Carolina politics. The case focused on gerrymandered legislative districts, which conservative Democrats had created with the acknowledged purpose of limiting the number of black politicians elected to the General Assembly. In the court's judgment, those districts "impermissibly dilute[d]" black voting strength – a violation of Section 2 of the Voting Rights Act. The ensuing revision of legislative maps produced startling results: By 1989, the number of black lawmakers serving in the General Assembly had grown from three to nineteen, then a record for any single legislative session in the state's history. Two years later, members elected Daniel T. Blue Speaker of the House; prior to 2020, that was the highest office ever held by a black politician in North Carolina.⁴⁶

During the 1990s and early 2000s, an increasingly influential black caucus in the legislature joined forces with white lawmakers from the progressive wing of the Democratic Party to pass a broad program of social and electoral reforms. Together with Governor James B. Hunt Jr., who was elected to his third and fourth terms in office in 1992 and 1996, they established Smart Start, a program that pumped \$240 million into local communities to provide preschool education and improved health care for young children; raised teacher salaries by a third and increased state spending on public education from 76 to 86 percent of the national average; launched Health Choice, a state program for uninsured children who were ineligible for Medicaid or other forms of federal assistance; and created a new Department of Juvenile Justice to address the underlying causes of youth crime. Hunt also championed

⁴⁶ *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), *aff'd in part, rev'd in part sub nom. Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986); Earls, Wynes, and Quattrucci, "Voting Rights in North Carolina," 581; "Two Blacks Join N.C.'s U.S. House Delegation," *News and Observer* (Raleigh, N.C.), November 4, 1992; William R. Keech and Michael P. Siström, "Implementation of the Voting Rights Act in North Carolina," Division of the Humanities and Social Sciences, California Institute of Technology, 1992, 14-17, <https://bit.ly/431VupE>.

inclusive governance. When he left office in 2001, 22 percent of his appointees to state agencies and commissions were minorities, a figure that matched the state's demography.⁴⁷

Between 1992 and 2009, Democratic lawmakers worked to sustain these achievements by expanding access to the franchise. Key legislation introduced early voting; permitted voters who went to the wrong precinct on Election Day to cast a provisional ballot; allowed same-day registration during early voting; and created a system for preregistering sixteen- and seventeen-year-olds, so that their names would be placed on the voter rolls automatically when they turned eighteen. The net effect of these reforms was a steady increase in general voter engagement. In 1996, North Carolina ranked forty-third among the states for voter turnout; it rose to thirty-seventh place by 2000 and to eleventh place in 2012.⁴⁸

Most of the increase was driven by higher rates of political participation among black North Carolinians. Between 2000 and 2012, black voter registration surged by 51.1 percent, as compared to 15.8 percent among whites. Black turnout on Election Day followed apace. Between 2000 and 2008, it jumped from 41.9 to 71.5 percent. In the 2008 and 2012 elections, blacks registered and voted at higher rates than whites for the first time in North Carolina's history. That level of participation was critically important in the 2008 presidential contest, when Barack H. Obama won North Carolina with a slim margin of 14,171 votes out of 4,271,125 ballots cast. He was the first Democrat running for President to carry the state since Jimmy Carter in 1976.⁴⁹

⁴⁷ Gary Pearce, *Jim Hunt: A Biography* (Winston-Salem: John F. Blair, 2010), 145-46, 263-66. In 1977, Hunt appointed Howard Lee, former mayor of Chapel Hill, to serve as Secretary of the Department of Natural Resources and Community Development. Six years later, he named Henry E. Frye to the State Supreme Court, and in 1999, elevated Frye to chief justice. See "Howard Lee," NCPedia, <https://bit.ly/3zpQqNX>; "Henry Frye," NCPedia, <https://bit.ly/3m1gtbk>.

⁴⁸ Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Farrar, Straus and Giroux, 2015), 290–91.

⁴⁹ For increases in Black voter registration and turnout, see *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 215 (4th Cir. 2016); Berman, *Give Us the Ballot*, 291.

B. Political Realignment

As black gains mounted during the 1990s and early 2000s, a growing number of conservative whites chose to abandon the Democratic Party rather than stand and fight within it. That process had roots in the 1964 presidential election. The Civil Rights Act passed in that same year set the stage by outlawing racial discrimination and forcing an end to Jim Crow as a system of legal oppression. Arizona Senator Barry M. Goldwater, who had opposed the law, won the Republican nomination with near unanimous support from southern delegates at the party's national convention. He insisted throughout the campaign that he was neither a racist nor a segregationist, but instead opposed civil rights legislation on constitutional grounds. The federal government, he argued, had no authority to compel the states or individuals to comply with beliefs about racial equality that they did not share. That said, Goldwater was not shy about admitting the racially charged appeal of his ideas. In 1961, he had told a gathering of southern Republican leaders that the party should "stop trying to outbid the Democrats for the Negro vote" and instead "go hunting where the ducks are." In time, that advice would come to be known as the Republican Party's "southern strategy."⁵⁰

Democrat Lyndon B. Johnson defeated Goldwater in a landslide, and in the aftermath of the 1964 election, many observers were quick to announce the death of conservatism. But Goldwater's showing below the Mason-Dixon Line suggested that they misread the moment. In addition to carrying his own state, the Arizonan won South Carolina, Georgia, Alabama, Mississippi, and Louisiana with totals

⁵⁰ Nina M. Moore, *Governing Race: Policy, Process, and the Politics of Race* (Westport, Conn.: Praeger, 2000), 60; "Goldwater Says He'd Curb Court, Also Stresses States' Rights in Swing Through South," *New York Times*, September 16, 1964; Stewart Alsop, "Can Goldwater Win in 64?" *Saturday Evening Post*, August 24, 1963, 24; E. M. Schreiber, "'Where the Ducks Are': Southern Strategy Versus Fourth Party," *Public Opinion Quarterly* 35 (Summer 1971), 157.

ranging from 54 to 87 percent of the vote. In North Carolina, he won a remarkable 44 percent. These numbers were a harbinger of what was to come in state and national politics.⁵¹

Sim A. DeLapp, former chairman and senior statesman in the North Carolina Republican Party, found hope in the number of whites who, despite being lifelong Democrats, were willing to vote for Goldwater. Writing in 1965, he described their motivation. "Right now," DeLapp declared, "we are being ruled by minorities. The member of the majority is the forgotten man." There was opportunity here. DeLapp urged Republicans to study Democrats' white supremacist victories in 1898 and 1900, to see how "members of the majority" might be persuaded to "rise up and turn against minority groups." The key was to revitalize the Republican Party by "**us[ing] the race issue to regain power** [emphasis added]."⁵²

No politician executed that strategy more effectively than five-term Republican Senator Jesse A. Helms Jr., first elected in 1972. Helms had cut his political teeth nearly a quarter century earlier in the brutal 1950 contest over the Democratic nomination to one of North Carolina's seats in the U.S. Senate. The top contenders in a crowded field of candidates were the sitting senator, Frank P. Graham, a liberal icon and past president of the University of North Carolina, and Willis Smith, a distinguished lawyer and segregationist. Smith built his campaign on explicit racial appeals. He charged that Graham favored "mingling of the races" and characterized federal fair employment initiatives, which Graham supported, as a bid to displace white "working men" from their jobs in favor of unqualified blacks. When Graham failed to win a majority in the first round of balloting, Jesse Helms, then a young radio news reporter, rallied supporters to persuade Smith to call for a run-off. In the head-to-head contest that followed, Smith out-pollled Graham by more than nineteen thousand votes. He then went on to win the general

⁵¹ "1964 Presidential General Election Results – North Carolina," Dave Leip's Atlas of U.S. Presidential Elections, <https://bit.ly/3TKU8ey>.

⁵² Sim DeLapp to William E. Miller, June 6, 1963, box 7, Sim A. DeLapp Papers, Rubenstein Rare Book and Manuscript Library, Duke University, Durham, N.C.

election. When Smith traveled to Washington to take his Senate seat in 1951, Helms followed along as a member of his staff.⁵³



Willis Smith campaign broadside. North Carolina Collection, Wilson Library, University of North Carolina at Chapel Hill.

Smith died in office in 1953, and Helms soon returned to North Carolina. He first worked for the North Carolina Bankers Association, and then in 1960 began a career as a television executive and broadcast editorialist. Helms distinguished himself as a sharp critic of Martin Luther King Jr. and the black civil rights movement. King, he insisted, was a communist whose principles were "not compatible

⁵³ For a detailed account of the 1950 contest, see Julian M. Pleasants and Augustus M. Burns III, *Frank Porter Graham and the 1950 Senate Race in North Carolina* (Chapel Hill: University of North Carolina Press, 1990).

with the concepts of this country." That animosity defined Helms's politics – and his appeal to conservative white voters – throughout his time in the Senate.⁵⁴

There is no better evidence of that fact than Helms's campaign against Democratic challenger Harvey B. Gantt in 1990. Gantt, an architect by training, was also a civil rights pioneer. In 1963, he became the first black student to enroll at Clemson University, and decades later he served as Charlotte's first black mayor. Late in the 1990 election, polls had Helms trailing Gantt by up to eight percentage points. It was time to play what one of the senator's advisers called the "race card." In the run-up to Election Day, the Helms campaign aired a television advertisement that played on white anxiety over black access to desegregated workplaces. The ad showed a white man's hands crumpling a rejection letter. He wore a wedding band and presumably had a family to support. The voice-over lamented:

You needed that job, and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says: It is. Gantt supports [racial quota laws] that make the color of your skin more important than your qualifications. You'll vote on this issue next Tuesday. For racial quotas, Harvey Gantt.

Against racial quotas, Jesse Helms.

At the same time, the state Republican Party mailed postcards to 125,000 voters in heavily black precincts, warning recipients, incorrectly, that they would not be allowed to cast a ballot if they had moved within the last thirty days, and that if they attempted to vote, they would be subject to imprisonment. Helms subsequently won the election with 65 percent of the white vote and 51 percent of the vote overall. When Gantt challenged him again in 1996, the results were the same.⁵⁵

⁵⁴ "King Holiday Bill Faces a Filibuster," *New York Times*, October 4, 1983.

⁵⁵ Thomas Goldsmith, "Thomas Farr, Jesse Helms, and the Return of the Segregationists," *Indy Week* (Durham, N.C.), January 3, 2018; Helms hands advertisement, <https://bit.ly/3lFf0qW>; William A. Link, *Righteous Warrior: Jesse Helms and the Rise of Modern Conservatism* (New York: St. Martin's Press, 2008), 380; Earls, Wynne, and Quattrucci, "Voting Rights in North Carolina," 589; Rob Christensen, *The Paradox of Tar Heel Politics: The*

C. Black President, White Fury

Helms's support among white voters reflected the fact that by the late 1990s and early 2000s, the electorate was as polarized as it had been in the Fusion era, a century before. Conservative whites now identified as Republicans, and a coalition of progressive whites and minority voters – blacks and a new, fast-growing Hispanic population – constituted the Democratic Party's base.

The divide was perhaps nowhere more apparent than in reaction to President Barack Obama's election in 2008. To some North Carolinians, a black president in the White House marked the culmination of a centuries-long struggle for freedom and equality. For others, the "hope and change" president was what historian Claude Clegg has described as the "poster boy for everything that was wrong" with America. The economic collapse of 2008 and the rise of the Tea Party movement in 2010 gave that sentiment a fearsome grip on angry white voters who focused their rage on a president they viewed as a "socialist, communist, fascist, Muslim, and/or foreign-born aspiring dictator."⁵⁶

Ron Unz, publisher of the American Conservative, an influential online platform, saw opportunity in that white anger. "As whites become a smaller and smaller portion of the local population in more and more regions," he explained, "they will naturally become ripe for political polarization based on appeals to their interests as whites. And if Republicans focus their campaigning on racially charged issues such as immigration and affirmative action, they will promote this polarization, gradually transforming the two national political parties into crude proxies for direct racial interests, effectively becoming the 'white party' and the 'non-white party.'" Unz predicted that since white voters constituted a majority of the national electorate, "the 'white party' – the Republicans – will end up

Personalities, Elections, and Events That Shaped Modern North Carolina (Chapel Hill: University of North Carolina Press, 2008), 278. For a synopsis of Gantt's life and career, see "Harvey Bernard Gantt," BlackPast, <https://bit.ly/3FN06pC>.

⁵⁶ Frank Newport, "Democrats Racially Diverse; Republicans Mostly White," Gallup, February 8, 2013, <http://bit.ly/2HOkDvH>; Christensen, *Paradox of Tar Heel Politics*, 309-12; Claude A. Clegg III, *The Black President: Hope and Fury in the Age of Obama* (Baltimore: Johns Hopkins University Press, 2021), 201-02.

controlling almost all political power and could enact whatever policies they desired, on both racial and non-racial issues."⁵⁷

Unz's assessment read like a script for North Carolina politics. Racial appeals figured prominently in the 2010 state elections. Take, for example, the effort to unseat John J. Snow Jr., a Democratic state senator from western North Carolina, and L. Hugh Holliman, Democratic majority leader in the state House of Representatives. Both had voted for the 2009 Racial Justice Act, which Democrats passed after decades of effort to reform or abolish capital punishment. The law gave inmates the right to challenge enforcement of the death penalty by using statistical evidence to prove that race was a factor in their sentencing. In the closing weeks of the campaign, the executive committee of the state Republican Party produced a mass mailing that attacked the law and its backers. An oversized postcard featured a photograph of Henry L. McCollum, a black man who had been convicted of raping and killing an eleven-year-old girl. It played to the same stereotypes of black men's infamous character and bestial sexuality that had been front-and-center in the white supremacy campaigns of 1898 and 1900, warning that "thanks to ultra-liberal" lawmakers like Snow and Holliman, McCollum "might be moving out of jail and into your **neighborhood** [emphasis in the original] sometime soon." The not-so-subtle message was that recipients who cared for their families' safety would vote to "get rid of criminal coddler[s]" and keep predators like McCollum "where they belong."⁵⁸

On Election Day, Snow, Holliman and sixteen other Democrats lost their seats, giving Republicans a majority in the General Assembly. Four years later, McCollum was exonerated and released from prison. The *New York Times* reported that the case against him, "always weak, fell apart

⁵⁷ Ron Unz, "Immigration, the Republicans, and the End of White America," *American Conservative*, September 19, 2011, <https://bit.ly/3Ldm60h>.

⁵⁸ Zachary Roth, *The Great Suppression: Voting Rights, Corporate Cash, and the Conservative Assault on Democracy* (New York: Crown, 2016), 96-98; "GOP Featured McCollum in 2010 Attack Ad," *WRAL.com*, September 4, 2014, <https://bit.ly/37SaIWG>.

after DNA evidence implicated another man" who "lived only a block from where the victim's body was found" and "had admitted to committing a similar rape and murder around the same time."⁵⁹

The timing of Republican gains in the General Assembly was fortuitous. The nation's decennial census was complete, and lawmakers would now take up the job of redistricting the state. In 2011, Republicans redrew North Carolina's Congressional and legislative district lines in ways that favored their partisan interests and would ultimately be overturned by a series of court decisions. But for the time being, gerrymandering worked. In the 2012 election, Republicans secured a super-majority in the General Assembly. Voters also sent Republican Patrick L. McCrory to the governor's office.⁶⁰

D. *Shelby County v. Holder* and House Bill 589

In 2013, the U.S. Supreme Court's ruling in *Shelby County v. Holder* gave North Carolina Republicans an opportunity to further secure their political dominance by making sweeping changes to state election law. The court struck down Section 5 of the Voting Rights Act, which since 1965 had required that the U.S. Department of Justice "preclear" changes in voting procedures in North Carolina counties covered by judicial review. Within hours of the ruling, Republican leaders announced that they planned to introduce legislation that would modify the ways North Carolinians registered to vote and cast their ballots. Lawmakers had been working on the bill for some time. As early as January 2012, a member of the Republicans' legislative staff had asked the State Board of Elections, "Is there any way to get a breakdown of the 2008 voter turnout, by race (white and black) and type of vote (early and Election Day)?" A year later, an aide for the Republican Speaker of the House requested "a breakdown, by race, of those registered voters [who] do not have a driver's license number." What eventually

⁵⁹ "DNA Evidence Clears Two Men in 1983 Murder," *New York Times*, September 2, 2014.

⁶⁰ Ian Millhiser, "The Cracks in the GOP's Gerrymandering Firewall," *Vox*, September 11, 2019, <https://bit.ly/35Tq1qL>; *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (overturning maps on racial gerrymandering grounds); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Sept. 3, 2019) (overturning legislative maps on partisan gerrymandering grounds).

emerged was House Bill 589, An Act to Restore Confidence in Government, which rolled back the electoral reforms enacted by Democrats in the 1990s and early 2000s.⁶¹

Like the election law that white supremacist Democrats crafted in 1899, House Bill 589 made no explicit reference to race; nevertheless, it took direct aim at the political clout of black voters. The law eliminated same-day registration, the first week of early voting, and the pre-registration program for sixteen- and seventeen-year-olds. It also loosened the rules for challenging voters' qualifications on Election Day and imposed a new voter photo-ID requirement.⁶²

The North Carolina Conference of the National Association for the Advancement of Colored People, the League of Women Voters, and the U.S. Department of Justice challenged House Bill 589 in the U.S. District Court for the Middle District of North Carolina. They lost there, but in 2016 the U.S. Court of Appeals for the Fourth Circuit ruled in their favor. A three-judge panel found compelling evidence of discriminatory intent in the Republican election law. Among other considerations, the court pointed to "the inextricable link between race and politics in North Carolina," Republican lawmakers' consideration and use of race-specific data on voting practices, and the bill's timing. In addition to following closely on the heels of the *Shelby County v. Holder* decision, House Bill 589 was situated at a critical juncture in North Carolina politics. The appellate court judges noted that "after years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised

⁶¹ *Shelby County v. Holder*, 570 U.S. 529 (2013); "Inside the Republican Creation of the North Carolina Voting Bill Dubbed the 'Monster' Law," *Washington Post*, September 2, 2016.

⁶² Michael D. Herron and Daniel A. Smith, "Race, *Shelby County*, and the Voter Information Verification Act in North Carolina," *Florida State University Law Review* 43 (Winter 2016), 477; House Bill 589, Session 2013, North Carolina General Assembly, <https://bit.ly/2S0t64K>.

to act as a major electoral force." Republican lawmakers "took away that opportunity because [blacks] were about to exercise it," and they did so, the judges added, "with almost surgical precision."⁶³

From this and other evidence, the Fourth Circuit panel concluded "that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina." The judges did not directly cite the 1900 disenfranchisement amendment to North Carolina's state constitution, but that was the obvious historical reference point. In the century that followed the amendment's ratification, no other change to election law had been so sweeping in its effect. The judges remanded the House Bill 589 case to the district court, with instructions to enjoin the voter photo-ID requirement and changes made to early voting, same-day registration, out-of-precinct voting, and teen preregistration.⁶⁴

E. The Strict Liability Voting Law Resurrected

In the wake of their setback in court, Republican lawmakers pivoted to tighter regulation of access to the ballot box. The measure that dominated public debate was a voter photo-ID amendment to the state constitution, which was ratified by popular referendum in 2018. Though it gained far less publicity, strict liability voter prosecution was also part of the picture. In 2017, the State Board of Elections made a so-called "felon audit" the centerpiece of its report on suspected fraud in the 2016 elections. At the time of publication, the audit had identified 441 voters with felony convictions who were suspected of casting an illegal ballot. "State law requires our agency to investigate 'frauds and irregularities in elections,'" the board explained, "and to report violations to the attorney general or district attorneys." After further investigation, the board referred 409 cases for prosecution, listing itself as the complainant. Many district attorneys declined to act on the information. As the board report

⁶³ *N.C. State Conference v. McCrory*, 831 F.3d at 214–15. On the case as litigated in U.S. District Court, see Complaint, *North Carolina State Conference of NAACP v. McCrory*, Civ No. 1:13-cv-658, (ECF No. 1), August 12, 2013; *North Carolina State Conference of NAACP v. McCrory*, 182 F. Supp. 3d 320 (M.D.N.C. 2016).

⁶⁴ *N.C. State Conference v. McCrory*, 831 F.3d at 241–42.

noted, some of them expressed "concern that a felon who has voted may not have been aware of the unlawfulness of his actions." Indeed, by the board's own admission, "education and [poor] understanding of the law appear[ed] to be the problem," not willful intent to commit a fraud.⁶⁵

Even a casual observer would also have called attention to the likely racial impact of prosecution. The election board did not publicly disclose demographic data to describe the 441 individuals identified in its "felon audit," but information released in response to a public records request paints a clear picture: Of the 441 persons the board tagged as suspected "felon voters," 290 – 68.08 percent – were black, and 131– 30.75 percent – were white. By comparison, blacks currently constitute 22 percent of the state's general population, while whites account for 65.78 percent. An even sharper racial disparity was evident in some of the first cases taken to court. In 2018, the Alamance County district attorney charged twelve voters with casting an illegal ballot while still under supervision for a felony offense. Nine of the twelve were black. A year later, the district attorney in Hoke County charged four individuals, all of whom were black, with the same offense.⁶⁶

In addition, the strict liability voting law remains unique in its specificity and severity. It still applies to only one offense attributable to electors: voting while ineligible because of a felony conviction. Other offenses require evidence of fraudulent intent. They include "fraudulently" impersonating a registered voter or causing another's name to be falsely registered; "corruptly" or "knowingly" swearing a false oath to election officials; "falsely" presenting "any certificate or other paper to qualify any person fraudulently as a voter"; registering to vote or voting in more than one

⁶⁵ "Post-Election Audit Report, General Election 2016," issued April 21, 2017, North Carolina State Board of Elections, 1-3, 5, Appendices 5 and 7, <https://bit.ly/2LQ3TFP>; see also State Board Defendants Response to Plaintiffs' Second Request for Production, NCSBE 00020-00030.

⁶⁶ Plaintiffs' Exhibit 4 (ECF No. 3-4), May 29, 2018, NCSBE Response Public Records Request from SCSJ and SCSJ's May 17, 2018 Public Records Act Request to NCSBE; "Arrested, Jailed and Charged with a Felony. For Voting," *New York Times*, August 2, 2018; "Convicted Felons Charged with Illegally Voting in Hoke," *Wral.com*, August 1, 2019, <https://bit.ly/3z8Xn5W>.

precinct, or more than one time, "with intent to commit a fraud"; and accepting "any money, property, or other thing of value . . . in return" for a favorable vote. All these offenses are punishable as Class I felonies. By comparison, it is only a misdemeanor "for any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election [official]".⁶⁷

Looking to the future, the state elections board was determined both to expose and to guard against felony voting, which, in its view, proliferated because of inadequate surveillance, policing, and education. To that end, the board contacted other state agencies to suggest reforms in the voter registration process and election oversight. The board proposed: 1) "working with public safety officials and the court system to ensure that felons are expressly notified that they lose their voting rights upon conviction"; 2) "increasing data sharing between local election officials to ensure a felon removed from one county does not re-register in another"; 3) "updating elections software to check felon status at the time of registration"; 4) "adding checkboxes to voter forms to ensure participants are aware of voter qualifications"; and 5) "educating the public about voting requirements." The election board's Republican Executive Director explained that a primary purpose of these suggestions was to **"support successful [future] prosecutions"** [emphasis added], by the "state's dedicated district attorneys."⁶⁸

The board, with its membership divided evenly along party lines, equivocated somewhat in its summary messaging. It was careful to note that the allegedly illegal votes its investigation uncovered only accounted for "approximately 0.01% of ballots" cast and had no significance in determining the

⁶⁷ NCGS 163-275, North Carolina General Statutes, North Carolina General Assembly, <https://bit.ly/3ZiCiAy>; NCGS 163-274, North Carolina General Assembly, <https://bit.ly/40Ed2Xe>.

⁶⁸ "Post-Election Audit Report, General Election 2016," 4, Appendix 7.

results of the 2016 elections. Even so, the board's executive director insisted that heightened scrutiny of prospective voters with felony convictions was essential to "ensur[ing] the integrity of elections" in North Carolina. That assertion, though directly contradicted by the substance of the board's report, resonated with Republican leaders' broader claims that voter fraud is a serious problem, that its true scale is unknown because it occurs largely undetected, and that stepped-up surveillance of voter registration and tighter restrictions on access to the ballot box are urgently needed.⁶⁹

Those claims notwithstanding, some Republican lawmakers seem to have had second thoughts about the lack of intent necessary to violate the strict liability voting law. In 2018, Republicans Mike Clampitt and Bob Muller introduced a bill in the Republican-controlled state House of Representatives to amend NCGS 163A-1389. Their proposal stipulated, "It shall be unlawful":

(5) For any person convicted of a crime which excludes the person from the right of suffrage, to vote with intent to commit a fraud at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.

The underlined phrase was new language to be inserted into the existing statute. In a roll call vote, the bill passed with the support of sixty Republican lawmakers; three others did not vote and twelve were excused from attendance. Thirty-one Democrats also voted aye, with fourteen away on excused absence. The legislation subsequently went to the state Senate, where it died in the Committee on Rules and Operations. A year later, in 2019, a group of fifteen House Democrats re-introduced the Republican bill. This time, it languished in a House committee and was not referred to the Senate.⁷⁰

⁶⁹ "Post-Election Audit Report, General Election 2016," 1, 7, Appendix 7. On Republican characterizations of voter fraud, see "Voter ID: A Form of Suppression or Necessary Protection?" Civitas Institute, June 28, 2018, <https://bit.ly/2IR8wOL>; "Voter ID: A Commonsense Solution to a Real Problem," March 5, 2020, Civitas Institute, <https://bit.ly/3IECrRa>.

⁷⁰ House Bill 1089, Edition 2, 2017-2018 Session, North Carolina General Assembly, <https://bit.ly/40fqRv3>; House Roll Call Vote Transcript for Roll Call #1196, 2017-2018 Session, North Carolina General Assembly,

Left unabated, the resurgence of the strict liability voting law is certain to have profound discriminatory consequences for black North Carolinians with felony convictions who vote while disqualified, even if they do so without intent to commit a fraud. Census figures make it clear that black North Carolinians are placed at jeopardy in numbers vastly disproportionate to their representation in the general population. Twenty-two percent of North Carolinians are black, yet blacks constitute 50 percent of inmates held in the state's prisons and 51 percent of those in federal penal institutions located within the state's borders. A similar disparity characterizes the sub-group that is most at risk for strict liability prosecution: persons whose convictions disenfranchise them because they are either on probation or under post-release supervision following incarceration. Of that current group, 41 percent are black.⁷¹

As the Plaintiffs argue in their amended complaint, the disenfranchising effect of North Carolina's strict liability voting law is not limited to individuals; it also adversely affects families and communities by fostering a "pervasive fear of a felony conviction or jail time" for what most citizens think of as the innocent act of casting a ballot. Anthony Haith, one of the black citizens arrested and prosecuted for felony voting in Alamance County, explained:

I am still fearful of voting now. I do not want to go to jail for voting. I vividly remember how the judge looked at me standing in the courtroom, as if I had knowingly committed a grave wrong, and I will never forget it. I told them in court that

<https://bit.ly/404erp7>; House Bill 819, 2019-2020 Session, North Carolina General Assembly, <https://bit.ly/3ZjuCOF>.

⁷¹ DAC Research and Planning, Automated System Query, North Carolina Department of Adult Correction, <https://bit.ly/3K7sRj6>; "Prisoners in 2020 – Statistical Tables," Office of Justice Programs, U.S. Department of Justice, 46, <https://bit.ly/3lDbQEj>; Frank R. Baumgartner, Expert Report on North Carolina's Disenfranchisement of Individuals on Probation and Post-Release Supervision, 3-4, *Community Success Initiative v. Moore*, No. 19-CVS-15941 (N.C. Super. Ct. July 16, 2020), <https://bit.ly/3z4Q0MU>; United States Census Bureau, *Quick Facts: North Carolina*, <https://bit.ly/400EzFx> (last visited 4/7/23).

I was unaware that what I was doing was wrong, but there was no change in how the State treated me.

Being prosecuted has affected my job search. Many employers will not give me an interview or take me seriously as a candidate because of the charge.

Even though I was ultimately not convicted for felony voting I am still fearful of voting until this day. I honestly do not know if I will ever vote again given everything that went on and how I was treated throughout the prosecution process.

The charge against Haith for felony voting was dropped after he pleaded to misdemeanor obstruction of justice under terms of the Alford doctrine, which requires no admission of guilt. He was sentenced to twenty-four hours of community service and a year of unsupervised probation. Afterward, Haith told a newspaper reporter that he was so shaken by the ordeal that "he would never vote again and would tell his four children not to vote."⁷²

The defenders of white rule who enacted North Carolina's strict liability voting law in 1877 would be gratified by that outcome.

X. Conclusion

The reform that House lawmakers proposed in 2018 and 2019 was – and remains – long overdue. North Carolina's strict liability voting law has been on the books, without substantive revision, for one hundred and forty-six years:

1877: If a person . . . convicted of a crime which excludes him from the right of suffrage . . . shall vote at any election, without having been legally restored to the

⁷² Brief of Amici Curiae, North Carolina Justice Center and Down Home N.C., *Community Success Initiative v. Moore*, No. 19-CVS-15941 (N.C. Super. Ct.), 5, cited in Plaintiffs' First Amended Complaint (ECF No. 36), 49, <https://bit.ly/3zlgdRM>; Affidavit of Anthony Haith, Exhibit A, Brief of Amici Curiae, North Carolina Justice Center and Down Home N.C., *Community Success Initiative v. Moore*, No. 19-CVS-15941 (N.C. Super. Ct.), <https://bit.ly/40vTfJx>; "Felony Charges of Illegal Voting Dismissed for Five N.C. Residents," *News and Observer* (Raleigh, N.C.), August 14, 2018.

rights of citizenship, he shall be deemed guilty of an infamous crime, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding two years, or both.⁷³

2023: Any of the acts or things declared in this [statute] to be unlawful, shall be guilty of a Class I felony. It shall be unlawful . . . [f]or any person convicted of a crime which excludes the person from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.⁷⁴

The strict liability statute's history leaves no doubt that it was crafted and has survived for the purpose, and with the effect, of obstructing black political participation.

All the facts cited in this Report point to a single conclusion: North Carolina's strict liability voting law is a relic of a long, dark era of racial injustice. It was originally enacted for the explicit purpose of suppressing the black vote, and it continues to have a disproportionate, discriminatory effect on black North Carolinians with felony convictions. In this respect, the statute violates fundamental principles of equal citizenship and equal protection of the law. John Smyth's declaration at the 1875 state constitutional convention still rings true: "The preamble to the Constitution of the United States, and the instrument itself, and our notions and conceptions of Democracy are all opposed to this system of disenfranchisement" and voter suppression.⁷⁵



James L. Leloudis II
April 10, 2023

⁷³ *Laws and Resolutions of the State of North Carolina, 1876-77*, 537.

⁷⁴ NCGSG 163-275, North Carolina General Statutes, North Carolina General Assembly, <https://bit.ly/3ZiCiAy>.

⁷⁵ "Speech Delivered by Mr. J. H. Smyth, of New Hanover, on Report of Committee on Suffrage and Eligibility to Office," *Daily Constitution* (Raleigh, N.C.), October 8, 1875.

APPENDIX

CURRICULUM VITAE

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EDUCATION

Ph.D., University of North Carolina at Chapel Hill, May 15, 1989

M.A., Northwestern University, June 16, 1979

B.A., with highest honors, University of North Carolina at Chapel Hill, May 14, 1977

ACADEMIC APPOINTMENT

Professor, Department of History, University of North Carolina at Chapel Hill.

ADMINISTRATIVE APPOINTMENTS (in reverse chronological order)

Peter T. Grauer Associate Dean for Honors, College of Arts and Sciences, and founding Director, The James M. Johnston Center for Undergraduate Excellence, University of North Carolina at Chapel Hill. Appointed July 1, 1999-June 30, 2004; reappointed July 1, 2004-June 30, 2009, appointment revised and extended July 1, 2007-June 30, 2012; reappointed July 1, 2012-June 30, 2017; appointment revised and extended July 1, 2014-June 30, 2019; reappointed July 1, 2019-June 30, 2024.

<http://honorscarolina.unc.edu>

Interim Director, Center for the Study of the American South, University of North Carolina at Chapel Hill, July 1, 1998-June 30, 1999.

Associate Chair, Department of History, University of North Carolina at Chapel Hill, July 1, 1996-June 30, 1998.

PROFESSIONAL AWARDS

North Caroliniana Society Book Award, 2010. Awarded for *To Right These Wrongs*.

Mayflower Cup, awarded by the North Carolina Literary and Historical Association, for the year's best work in non-fiction, 1996. Awarded for *Schooling the New South*.

Claude A. Eggertsen History of Education Dissertation Award, 1989, presented by the Rackham School of Graduate Studies, University of Michigan, for the best dissertation on the history of education.

Albert J. Beveridge Award, 1988, presented by the American Historical Association for *Like a Family*.

Merle Curti Social History Award, 1988, presented by the Organization of American Historians for *Like a Family*.

Philip Taft Labor History Award, 1988, presented by the New York State School of Industrial and Labor Relations, Cornell University, for *Like a Family*.

Honorable mention, John Hope Franklin Award, 1988, presented by the American Studies Association for *Like a Family*.

Merit Award of Recognition, 1988, presented by the North Carolina Society of Historians for *Like a Family*.

Louis Pelzer Memorial Award, 1982, presented by the Organization of American Historians for "School Reform in the New South."

Honorable mention, Research on Women in Education Award, 1984, presented by Women Educators, American Educational Research Association, for "School Reform in the New South."

PROFESSIONAL HONORS

Faculty Service Award, General Alumni Association, University of North Carolina at Chapel Hill, 2019.

Engaged Scholarship Award, Office of the Provost, University of North Carolina at Chapel Hill, 2011.

Senior Fellow, Kenan Institute for Ethics, Duke University, "Moral Challenges of Poverty and Inequality," 2010-2011.

Academic Leadership Fellow, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 2003. Included participation in the Leadership Development Program, Center for Creative Leadership, San Diego, California.

Commencement Speaker, University of North Carolina at Chapel Hill, December, 2003 (selected by Senior Class officers and marshals).

Chapman Family Fellowship, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1997.

Fellow of the Academy of Distinguished Teaching Scholars, University of North Carolina at Chapel Hill, inducted in 1996.

Fellow of the Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1992.

Ruth and Phillip Hettleman Award for Outstanding Scholarly or Artistic Accomplishment by Young Faculty, University of North Carolina at Chapel Hill, 1995. \$5,000

Students' Undergraduate Teaching Award, University of North Carolina at Chapel Hill, 1991.

SCHOLARSHIP

Books

Co-author, *Fragile Democracy: The Struggle Over Race and Voting Rights in North Carolina* (Chapel Hill: University of North Carolina Press, 2020). 176 pp.

Co-author, *To Right These Wrongs: The North Carolina Fund and the Battle to End Poverty and Injustice in 1960s America* (Chapel Hill: University of North Carolina Press, 2010). 436 pp.

Schooling the New South: Pedagogy, Self, and Society in North Carolina, 1880-1920 (Chapel Hill: University of North Carolina Press, 1996). 338 pp.

Co-author, *Like a Family: The Making of a Southern Cotton Mill World* (Chapel Hill: University of North Carolina Press, 1987 and 2000; New York: W. W. Norton, 1989). 468 pp.

Expert Reports – Voting Rights

North Carolina A. Philip Randolph Inst. v. The North Carolina State Board of Elections, 1:20CV876 (M.D.N.C. Feb. 14, 2022)

Common Cause v. Hall, Wake County, 21 CVS 015426

Holmes v. Moore, Wake County, 18 CVS 15292

North Carolina State Conference of the NAACP v. Cooper, 430 F. Supp. 3d 15 (M.D.N.C. 2019)

North Carolina State Conference of the NAACP v. McCrory, 182 F. Supp. 3d 320 (M.D.N.C. 2016)

Historical Exhibits

"Fragile Democracy: The Struggle Over Race and Voting Rights in North Carolina,"
<https://adobe.ly/3c8WJsl>.

"Silent Sam: The Confederate Monument at the University of North Carolina,"
<https://silentsam.online>.

"The Carolina Hall Story," a permanent exhibit on race, politics, and historical memory at the University of North Carolina at Chapel Hill, installed in Carolina Hall, November, 2016.

"Like a Family: The Making of a Southern Cotton Mill World," Teaching and Learning in the Digital Age, American Historical Association, 2001 (no longer available online).

Articles

"Leadership and Politics in the War on Poverty: The Case of the North Carolina Fund," *Popular Government* (Special Issue: Perspectives on Poverty in North Carolina) 68 (Spring/Summer 2003): 2-13.

Co-author, "Citizen Soldiers: The North Carolina Volunteers and the South's War on Poverty," in Elna C. Green, ed., *The New Deal and Beyond: Social Welfare in the South since 1930* (Athens: University of Georgia Press, 2003), pp. 138-62.

"A Classroom Revolution: Graded School Pedagogy and the Making of the New South," in Czeslaw Majorek and Erwin V. Johanningmeier, eds., *Educational Reform in International Perspective: Past, Present, and Future* (Krakow: Polish Academy of Sciences, 2000), pp. 245-60.

Co-author, "Citizen Soldiers: The North Carolina Volunteers and the War On Poverty" *Law and Contemporary Problems* 62 (No. 4, Autumn 1999): 178-96.

"Schooling the New South: Pedagogy, Self, and Society in North Carolina, 1880-1920," *Historical Studies in Education/Revue d'histoire de l'éducation* 5 (Fall 1993): 203-229.

"Oral History and Piedmont Mill Villages, 1880-1940," *International Journal of Oral History* 7 (November 1986): 163-80.

"Cotton Mill People: Work, Community, and Protest in the Textile South, 1880-1940," (with Jacquelyn Hall and Robert Korstad) *American Historical Review* 91 (April 1986): 245-86.

"School Reform in the New South: The Woman's Association for the Betterment of Public School Houses in North Carolina, 1902-1919," *Journal of American History* 69 (March 1983): 886-909.

Presentations

Opening plenary speaker, co-host, and planning co-chair, Universities Studying Slavery conference, University of North Carolina at Chapel Hill, Chapel Hill, N.C., March 15-19, 2023.

Discussant, "Designing an Educational System for Progressive Era Appalachia," Southern Historical Association, Birmingham, Alabama, November 8-11, 2018.

"Scholarship and Advocacy," American Historical Association, Denver, CO, January 6, 2017.

"Charles Brantley Aycock, Race, and Historical Memory," Historical Society of North Carolina, University of North Carolina at Greensboro, October 14, 2016.

"Why Does Studying the War on Poverty Matter?" Southern Historical Association, Washington, DC, November 13-16, 2014.

"Poverty Pedagogy Roundtable: Enlisting the History of Poverty to Change the Public Conversation," Organization of American Historians, Milwaukee, Wisconsin, April 19, 2012.

Invited participant and presenter, "Politics, Activism, and the History of America's Public Schools," A Conference Celebrating the 40th Anniversary of Michael Katz's *The Irony of Early School Reform*, University of Pennsylvania, April 12-13, 2008.

Discussant, "Southern Exceptions," History of Education Society-Canadian History of Education Association joint meeting, Ottawa, Ontario, October 26-29, 2006.

"What Was Lost: African American Accounts of School Desegregation," as part of a panel on The Long Civil Rights Movement: The Movement Past and Present, Organization of American Historians, Boston, Massachusetts, March 27, 2004

"The Post-Brown South: Filling Gaps Between Law, Tradition, and Transition," American Educational Studies Association, Pittsburgh, Pennsylvania, November 2, 2002.

Discussant, "Schooling and Teaching Before the Civil War," History of Education Society, Pittsburgh, Pennsylvania, November 2, 2002.

"Confronting Crisis in Schools: Women and Desegregation After World War II," Twelfth Berkshire Conference on the History of Women: Local Knowledge-Global Knowledge, University of Connecticut at Storrs, June 5, 2002.

"Conversations Behind the Wall," Invitational Conference on the History of Education, Stanford University, April 2000.

"Education and the Color Line," International Standing Conference on the History of Education, Sydney, Australia, July 1999.

Discussant, invitational conference on the "Segregated South," Sidney Sussex College, University of Cambridge, March 23-27, 1999.

Chair and discussant, "New Research in the History of Education," History of Education Society, October 29-31, 1998.

"Race and Ethnicity in the History of Education," American Educational Research Association, San Diego, California, April 13-17, 1998.

Chair and discussant, "Teachers and Race: Rethinking Interpretations of the Past," American Educational Research Association, San Diego, California, April 13-17, 1998.

- "Student Activism and the South's War on Poverty," Mellon Seminar in American History, Sidney Sussex College, Cambridge University, Cambridge, England, December 1, 1997.
- Discussant, "Rebels and Rabble Rousers: Southern Student Activism in the 1960s," History of Education Society, Philadelphia, Pennsylvania, October 23-26, 1997.
- Panelist, "A Tenth-Year Retrospective on *Like a Family*," Southern Labor Studies Conference, Williamsburg, Virginia, September 25-28, 1997.
- Discussant, "Southern Progressives and Labor," Fourth Southern Conference on Women's History, Charleston, South Carolina, June 12-14, 1997.
- "Student Volunteers, the North Carolina Fund, and the Meanings of Democracy," Organization of American Historians, San Francisco, California, April 17-20, 1997
- Discussant, "Roundtable on the History and Social Context of Education," session on "Institutional Independence and Market Choice," and book session on my *Schooling the New South*, American Educational Research Association, Chicago, Illinois, March 24-28, 1997.
- Discussant, "Teachers, Race, and Biography," Joint Conference of the Canadian History of Education Association and the History of Education Society (USA), Toronto, Canada, October 17-20, 1996.
- "Education and the Making of a New South," 18th International Standing Conference on the History of Education, Krakow, Poland, August 5-9, 1996.
- Presenter, Invitational Conference on New Perspectives on Educational Research, Sponsored by the Spencer Foundation and the Office of Educational Research and Improvement, U.S. Department of Education, Stanford, California, June 24-25, 1996.
- Discussant, "Women's Educational Experiences in Mid-Nineteenth-Century Schools," Tenth Berkshire Conference on the History of Women, University of North Carolina, Chapel Hill, North Carolina, June 7-9, 1996.
- "A Classroom Revolution: Graded School Pedagogy and the Making of the New South," History of Education Society, Minneapolis, Minnesota, October 19-22, 1995.
- Chair, "Landscapes and Languages," conference on Lessons of Work: New Approaches to the Study of Occupational Culture, University of North Carolina at Chapel Hill, September 24, 1994.
- Discussant, book session on Bruce Curtis, "'True Government by Choice Men?': Inspection, Education, and State Formation in Canada West," American Educational Research Association, New Orleans, Louisiana, April 6, 1994.
- "Writing the History of Education in the New South," Spencer Fellows Forum, National Academy of Education, Stanford University, Palo Alto, California, May 6-7, 1993.
- Discussant, "Race, Class, and the Law: New Perspectives on North Carolina," Organization of American Historians, Anaheim, California, April 15-18, 1993.

"A Classroom Revolution: The Transition from Common-School to Graded-School Pedagogy in the New South," Canadian History of Education Association, Lethbridge, Alberta, October 22-25, 1992.

Presenter and discussant, "The Agrarian South and the Industrial South," Vance-Granville Community College Faculty Seminar on Southern Culture, Henderson, North Carolina, June 20, 1991.

Discussant, "Gender, Race, and Work," Southern Conference on Women's History, Chapel Hill, North Carolina, June 7-8, 1991.

Discussant, "Educational Change in America, 1865-1930," Missouri Valley History Conference, Omaha, Nebraska, March 14-16, 1991.

"Schooling the New South: Pedagogy, Self, and Society in North Carolina, 1880-1920," Southern Historical Association, New Orleans, Louisiana, October 31-November 3, 1990.

"Roundtable: *Like a Family: The Making of a Southern Cotton Mill World*," Social Science History Association, Chicago, Illinois, November 3-6, 1988.

"The Workers' World in Piedmont Mill Villages, 1880-1930," Historical Society of North Carolina, Durham, North Carolina, April 10, 1987.

"'Honest, Hard Working People': An Oral History of Family and Community Life in Piedmont Mill Villages, 1880-1940," Organization of American Historians, New York, New York, April 10-13, 1986.

Discussant, "Unions and Southern Labor," Organization of American Historians, Minneapolis, Minnesota, April 18-21, 1985.

"Learning by Listening: An Introduction to the Southern Oral History Program," Society of North Carolina Archivists, Winston-Salem, North Carolina, March 15, 1985.

"'Like a Family': Class, Community, and Conflict in the Piedmont Textile Industry, 1880-1980," presented with Robert Korstad and Jacquelyn Dowd Hall as one of six papers at a by-invitation-only conference on the Future of American Labor History, Northern Illinois University, DeKalb, Illinois, October 10-12, 1984. I authored and presented an earlier version at the Fourth Southern Labor Studies Conference, Atlanta, Georgia, September 30-October 2, 1982, and as the Patrick Memorial Lecture, Guilford College, Greensboro, North Carolina, March 23, 1983.

"Schooling for a New South: The Political Economy of Public Education in North Carolina, 1880-1940," Southern History of Education Society, Atlanta, Georgia, March 26-27, 1982.

"School Reform in the New South: The Woman's Association for the Betterment of Public School Houses in North Carolina, 1902-1919," American Studies Association, Memphis, Tennessee, October 29-November 1, 1981; Social Science History Association, Nashville, Tennessee,

October 22-25, 1981; and Association of Historians in Eastern North Carolina, Mount Olive, North Carolina, October 9, 1981.

"Changing Social Functions of Education in North Carolina, 1860-1920," Third Citadel Conference on the South, Charleston, South Carolina, April 23-25, 1981.

"The Use of Historical Research to Inform Public Policy," North Carolina Association for Research in Education, Asheboro, North Carolina, May 12, 1980.

"Methodist Women and White Male Morality in the Antebellum South: The *Southern Lady's Companion*, 1847-1854," Women in New Worlds: Historical Perspectives on the United Methodist Tradition, Cincinnati, Ohio, February 1-3, 1980.

TEACHING

Recent Courses

2022-2023 HIST 367 North Carolina Since 1865, 29.

2021-2022 HNRS 353 Slavery and the University, 18; HIST 367 North Carolina Since 1865, 35.

2020-2021 Teaching release to assume responsibilities as co-chair of the University Commission on History, Race, and a Way Forward.

2019-2020 HNRS 353 Slavery and the University, 15; HIST 367 North Carolina Since 1865, 43; HIST 493, Internship in History, 1; HNRS 353 (Maymester), Silicon Revolution (canceled due to COVID-19 pandemic).

2018-2019 HIST 358 The New South, 22; HIST 993 Master's Research and Thesis, 1; HIST 367 North Carolina Since 1865, 48; HNRS 353 (Maymester), Silicon Revolution, 16.

2017-2018 HIST 398 Slavery and the University, 14; HIST 495 Directed Readings, 1; HIST 994, Doctoral Research and Thesis, 1; HIST 367 North Carolina Since 1865, 53; HIST 994, Doctoral Research and Thesis, 1; HNRS 353 (Maymester), Silicon Revolution, 16.

2016-2017 HIST 398, Slavery and the University, 14; HIST 493 Internship in History, 1; HIST 994 Doctoral Research and Thesis, 2; HIST 367 North Carolina Since 1865, 53; HIST 994 Doctoral Research and Thesis, 1; HNRS 353 (Maymester), Silicon Revolution, 16.

2015-2016 HNRS 353 Slavery and the University, 15; HIST 994 Doctoral Research and Thesis, 2; HNRS 396 Independent Study, 2; HIST 994 Doctoral Research and Thesis, 3; (HIST 367 administrative leave in Spring 2016 to co-chair Chancellor's History Task Force); HNRS 353 (Maymester), Silicon Revolution, 16.

Recent Graduate Students

R. Joshua Sipe, "Evolving Jim Crow: An Analysis of the Consolidation Movement on the Virginia Peninsula, 1940-1958," M.A. thesis, 2019.

Elizabeth Lundeen, "Brick and Mortar: Historically Black Colleges and the Struggle for Equality, 1930-1960," Ph.D. dissertation, 2018.

Evan Faulkenbury, "Poll Power: The Voter Education Project and the Financing of the Civil Rights Movement, 1961-1992," Ph.D. dissertation, 2016. Published as *Poll Power: The Voter Education Project and the Movement for the Ballot in the American South*, University of North Carolina Press, 2019.

Willie J. Griffin, "Courier of Crisis, Messenger of Hope: Trezzvant W. Anderson and the Black Freedom Struggle for Economic Justice," Ph.D. dissertation, 2016. Forthcoming, Vanderbilt University Press, 2021.

Brandon K. Winford, "'The Battle for Freedom Begins Every Morning': John Hervey Wheeler, Civil Rights, and New South Prosperity," Ph.D. dissertation, 2014. Published as *John Hervey Wheeler: Black Banking and the Economic Struggle for Civil Rights*, University Press of Kentucky, 2020. Winner of the Lillian Smith Award, 2020.

GRANTS

"The Marketing of the New South and the Education of African American Children," Spencer Foundation, 2000. \$263,000

"Race, Ethnicity, and Schooling in the American South," planning grant, Spencer Foundation, 1999. \$50,000

Chancellor's Technology Grant, "Technology in the Undergraduate Survey," University of North Carolina at Chapel Hill, 1998. \$125,000

Spencer Mentor Network, The Spencer Foundation, Chicago, Illinois, 1996-1998. \$50,000 for support of graduate advisees, 1996-97 and 1997-98.

Research travel grant, Asian Studies Curriculum, University of North Carolina at Chapel Hill. For travel to Beijing, Wuhan, and Guangzhou, November 12-25, 1994. \$2,500

Course development grant, Center for Teaching and Learning, University of North Carolina, and the Corporation on National and Community Service (AmeriCorps), to design an oral history offering on race and poverty in the post-WWII South, Summer 1994. \$3,000

Spencer Post-Doctoral Fellowship, National Academy of Education, Stanford University, Palo Alto, California, 1992-93. \$30,000

Research Fellowship for Recent Recipients of the Ph.D., American Council of Learned Societies, 1992-93. \$10,000

Spencer Dissertation Year Fellowship, Woodrow Wilson National Fellowship Foundation, Princeton, New Jersey, 1988-89. \$12,500

George E. Mowry Dissertation Fellowship, Department of History, University of North Carolina at Chapel Hill, 1987-88. \$5,000

William F. Sullivan Research Fellowship, Museum of American Textile History, North Andover, Massachusetts, 1985-86. \$5,000

Dissertation Fellowship, Duke University-University of North Carolina Women's Studies Center, 1984-85. \$3,000

Research Fellowship, Rockefeller Archive Center of the Rockefeller University, North Tarrytown, New York, 1982 and 1983. \$3,000

PROFESSIONAL SERVICE

External review committee, Honors College, University of Buffalo, 2018

External Review Committee, Honors College, University of Delaware, 2017.

External Review Committee, Honors Program, University of Maryland, 2014.

External Review Committee, University Scholars Program, National University of Singapore, 2014.

Consultant, Levine Museum of the New South, 2009.

Selection Committee, Small Grants Program, Spencer Foundation, Chicago, Illinois, 2008 to 2010.

Nominating committee, History of Education Society, 2009.

Manuscript reader for the University of Chicago Press, University of Georgia Press, University of North Carolina Press, and University of Virginia Press.

Nominating Committee, Division F – History and Historiography, American Educational Research Association, 2004 to 2006.

History of Education Outstanding Book Award Committee, History of Education Society 1999 to 2002 (chair, 2002).

Program Committee, History of Education Society, 1998, 2002 and 2006.

Selection Committee, Spencer Dissertation Fellowship Program, Spencer Foundation, Chicago, Illinois, 1996 to 1998.

Program Committee, Division F – History and Historiography, American Educational Research Association, 1997 and 1998.

Editorial Board, *History of Education Quarterly*, 1997 to 1999.

Review editor, *Southern Cultures*, 1993 to 1998.

Editorial Advisory Board, "Documenting the American South," a World Wide Web digitization project, Davis Library, University of North Carolina at Chapel Hill, 1996 to present.

Editorial advisory board, *North Carolina Historical Review*, North Carolina Division of Archives and History, 1992 to -1997.

UNIVERSITY SERVICE

Co-Chair, University Commission on History, Race, and a Way Forward, University of North Carolina at Chapel Hill, January 2020 to present.

Chancellor's Advisory Committee on Naming, University of North Carolina at Chapel Hill, 2015 to present.

Co-Chair, Chancellor's Task Force on UNC's History, University of North Carolina at Chapel Hill, September 2015 to 2018.

Search Committee, Dean of the School of Law, University of North Carolina at Chapel Hill, September 2014 to present.

Liberal Arts Strategic Task Force, chair, College of Arts and Science, University of North Carolina at Chapel Hill, 2013 to 2015.

Steering Committee on Out-of-State Applications and Enrollment, Office of Admissions, University of North Carolina at Chapel Hill, 2013 to 2015.

Global Partnership Roundtable, Office of the Provost, University of North Carolina at Chapel Hill, 2011 to 2019.

Center for Faculty Excellence Advisory Board, University of North Carolina at Chapel Hill, 2010 to 2012.

Morehead-Cain Foundation, Scholarship Selection Committee, University of North Carolina at Chapel Hill, 2008 to 2016.

President, Academy of Distinguished Teaching Scholars, University of North Carolina at Chapel Hill, 2008 to 2012.

Advisory Committee, Center on Poverty, Work and Opportunity, School of Law, University of North Carolina at Chapel Hill, 2005 to 2015.

College of Arts and Sciences Study Abroad Advisory Committee, University of North Carolina at Chapel Hill, 2004 to present.

Nannerl O. Keohane Distinguished Visiting Professorship, advisory committee, University of North Carolina at Chapel Hill and Duke University, 2004 to 2006.

Chancellor's Commencement Advisory Committee, 2004 to 2006.

Search Committee, Dean of the College of Arts and Sciences, University of North Carolina at Chapel Hill, August 2003 to March 2004.

Implementation Committee, Freeman Foundation Asian Studies Initiative, College of Arts and Sciences, University of North Carolina at Chapel Hill, 2002 to 2004.

Advisory Committee, Center for Teaching and Learning (as of July 1, 2009, the Center for Faculty Excellence), University of North Carolina at Chapel Hill, 2002 to present.

Undergraduate Curriculum Review Committee, College of Arts and Sciences, University of North Carolina at Chapel Hill, 2001-2002.

Universities Coordinating Committee, Robertson Scholars Program, University of North Carolina at Chapel Hill and Duke University, 2000 to 2014.

Administrative Boards, General College and College of Arts and Sciences, University of North Carolina at Chapel Hill, 1999 to 2008.

Capital Campaign Task Force, Sub-Committee on Academic Community, University of North Carolina at Chapel Hill, 1999.

Public Fellows Program, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1998-1999.

Administrative Board, Academic Affairs Library, University of North Carolina at Chapel Hill, 1998 to 2001.

Faculty Advisory Board, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1998 to 2001.

Chair, Faculty Legislative Liaison Group, University of North Carolina at Chapel Hill, 1998.

Acting Director, Undergraduate Studies Committee, Department of History, University of North Carolina at Chapel Hill, Spring 1998.

Faculty Advisor, Order of the Old Well, service honor society, University of North Carolina at Chapel Hill, 1998 to present.

Advisory Board, APPLES Service Learning Program, University of North Carolina at Chapel Hill, 1997 to 1999.

Architectural Planning Committee, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1997 to 1998.

Leadership Development Working Group, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1997 to 2004.

Phi Beta Kappa executive committee, University of North Carolina at Chapel Hill, 1997 to present.

Academic Coordinator, University History Project, Southern Oral History Program, Department of History, University of North Carolina at Chapel Hill, 1997 to 2000.

Public Service Roundtable, University of North Carolina at Chapel Hill, 1997 to 1999.

Acting Director, Southern Oral History Program, Department of History, University of North Carolina at Chapel Hill, Spring 1997.

Chapman Fellows' Conference on Teaching, program committee, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, 1997.

Chancellor's Intellectual Climate Task Force, Service Learning Subcommittee (Acting Chair), University of North Carolina at Chapel Hill, 1996-1997.

Executive Committee, Center for the Study of the American South, University of North Carolina at Chapel Hill, 1996 to 2001.

Faculty Committee on Research, University of North Carolina at Chapel Hill, 1996 to 1999.

Educational Policy Committee, University of North Carolina at Chapel Hill, 1995 to 1998.

Historic Properties Committee, University of North Carolina at Chapel Hill, 1995 to 2004.

Director of Honors, Department of History, University of North Carolina at Chapel Hill, 1994 to 1996.

Search Committee, Curator of the North Carolina Collection, University Library, University of North Carolina at Chapel Hill, 1993-1994.

Faculty Council, University of North Carolina at Chapel Hill, 1991 to 1994.

Committee on Teaching, Department of History, University of North Carolina at Chapel Hill, 1990 to 1996.

Chair's Advisory Committee, Department of History, University of North Carolina at Chapel Hill, 1990 to 1994.

Chair, Program Committee of the Faculty Working Group on Southern Studies, Institute for Research in Social Science, University of North Carolina at Chapel Hill, 1991-1992.

Advisory Committee, Institute for Research in Social Science, University of North Carolina at Chapel Hill, 1991-1992.

Undergraduate Studies Committee, Department of History, University of North Carolina at Chapel Hill, 1989 to 1991, 1994 to 1998 (chair 1997-1998)

PUBLIC HISTORY AND COMMUNITY SERVICE

"Race and Voting Rights in North Carolina," Chatham County Reembrace Association, October 13, 2022.

"Race and Voting Rights in North Carolina," Policy 360 podcast, hosted by Judith Kelley, Sanford School of Public Policy, Duke University, September 24, 2020.

"Voting Rights and Voting Wrongs," Southern Discomfort podcast, hosted by Jonathan Michels, September 22, 2020.

"Race and Voting Rights in North Carolina," Charlotte Talks, WFAE FM 90.7, September 14, 2020.

"African Americans and the Ballot, A Continuing Struggle for Freedom," orange County Community Remembrance Coalition, Orange County Department of Human Rights and Relations, North Carolina Conference of the NAACP, August 6, 2020.

"Battling Poverty, Building Prosperity," Board of Governors, North Carolina Bar Association, Southern Pines, North Carolina, October 9, 2011.

"Reconstructing North Carolina: Leadership Lessons from History," North Carolina Association of County Commissioners, Concord, North Carolina, August 19, 2011.

"Child Labor in the Southern Textile Industry," Standing on a Box: Lewis Hine in Gastonia, 1908, North Carolina Humanities Council, Gastonia, North Carolina, November 15, 2008.

"Service to State and Region," Symposium on University History, University of North Carolina at Chapel Hill, October 12, 2006.

"The University of North Carolina in Peace, War, and Reconstruction," paper presented at a symposium on Remembering Reconstruction, Center for the Study of the American South, University of North Carolina at Chapel Hill, October 2, 2004.

"Gastonia, 1929 in History and Memory," History Happened Here, North Carolina Humanities Council symposium on the 75th anniversary of the 1929 Loray Mill Strike, Gastonia, North Carolina, June 12, 2004.

"What's a University For? Reflection's on Carolina's History," Inaugural Gladys Coates University History Lecture, University of North Carolina at Chapel Hill, February 12, 2004.

"Public Education and the Making of a New North Carolina," Appalachian State University, Boone, North Carolina, April 30, 1999; and for a symposium on "Charles Brantley Aycock's North Carolina: Politics, Education, and Race Relations in the Progressive Era," Wayne Community College, Goldsboro, North Carolina, January 20, 2001.

Member, Board of Directors, Pope House Museum Foundation, Raleigh, North Carolina, 2000 to present.

"Can Every Child be a High Achiever? Historical Perspectives on the Pursuit of Excellence," Museum of the New South, Charlotte, North Carolina, February 5, 2000.

"A 20th-Century Tar Heel Retrospective," faculty coordinator, Program in the Humanities and Human Values, University of North Carolina at Chapel Hill, July 28-29, 1999.

"North Carolina's Industrial Revolution," Hillsborough, North Carolina, January 17, 1999.

"The Once and Future North Carolina: Reflections on History and Human Relations," Wildacres Leadership Initiative, Chapel Hill, North Carolina, February 13, 1998.

"The Millennium and America's Educational Past," an address given by invitation of the Secretary of Education, Millennium Project Round Table, U.S. Department of Education, Washington, D.C., February 4, 1998.

"Through the Eyes of Race," Public Fellows Symposium, Institute for the Arts and Humanities, New Bern, North Carolina, January 31, 1998.

"Southern Industrialization," Elderhostel, Chapel Hill, North Carolina, September 11, 1997.

"Student Radicalism in the 1930s," weekend mini-course sponsored by the Program in the Humanities and Human Values, University of North Carolina at Chapel Hill, April 26, 1997.

Conference planner, "No Easy Walk: The North Carolina Fund Action Project," a three-day conference on poverty and poverty policy with grassroots activists, North Carolina Fund volunteers, policy makers, foundation officers, and legislative representatives, Durham, North Carolina, December 12-14, 1996.

Carolina Speakers Bureau, University of North Carolina, Chapel Hill, North Carolina, 1995 to present.

"Looking Back to the Future: The Fate of the Lecture in a Age of Multi-Media," Autumn Sunday Symposium on Communicating Information in a Multimedia Culture, Institute for the Arts and Humanities, University of North Carolina at Chapel Hill, October 9, 1994.

Consultant, "Only a Teacher," a series of three one-hour documentaries on the history of teaching as women's work, produced by the Project on Women and Social Change, Smith College, and WGBH-Boston, 1994 to present.

"Paul Green and the University of North Carolina," Program in the Humanities and Human Values, University of North Carolina at Chapel Hill, April 10, 1994.

Panelist, "'Tar Heel Voices, Ringing Clear': The Bicentennial Oral History Project," Friends of the Library, University of North Carolina at Chapel Hill, December 2, 1993.

"What Should a University Be? Students, Curriculum, and Campus Life at the University of North Carolina," Friends of the Library, University of North Carolina at Chapel Hill, October 4, 1993. This talk was later published as the introduction to an exhibit catalog entitled "Two Hundred

Years of Student Life at the University of North Carolina," *Southern Research Report* 4 (Fall 1993): 1-14.

"The Asheville Normal and Teachers College and the History of Education in North Carolina," Warren Wilson College, Asheville, North Carolina, August 7, 1993.

Consultant, "Women of Substance," an oral history project on the Asheville Normal and Collegiate Institute and the lives of white women teachers at the turn of the century, sponsored by Warren Wilson College, the University of North Carolina School of Education, and the North Carolina Humanities Council, 1993.

Consultant, "Memories of New Bern," a local history project sponsored by the North Carolina Humanities Council, 1991 to 1995.

"The Old Curriculum and the New: The University of North Carolina in the Nineteenth Century," Hinton James Lecture, Dialectic and Philanthropic Societies, University of North Carolina at Chapel Hill, February 12, 1991.

"From Farm to Factory: The Worlds of Southern Cotton Mill Workers," invited public lecture in a year-long series, "The Civil War in North Carolina, A Commemoration, 1865-1990," North Carolina Department of Cultural Resources, Elon College, Elon, North Carolina, June 23, 1990.

"From Farm to Factory: The Workers' World in the Southern Textile Industry," American Studies Conference for Foreign Scholars, United States Information Agency, Duke University, and the University of North Carolina, July 9, 1990, October 15, 1990, March 25, 1991, and April 15, 1991.

"Southern Regionalism," Bertelsmann Foundation German-American Teacher Exchange, Chapel Hill, North Carolina, March 27, 1990.

"The South's Industrial Revolution," Culbreth Junior High School, Chapel Hill, North Carolina, March 6, 1990. An illustrated lecture and small-group workshop presented with assistance from students in the first-year graduate seminar in American history, Department of History, University of North Carolina at Chapel Hill.

Creative and planning consultant to the Department of Speech Communication, University of North Carolina at Chapel Hill, Spring and Fall 1988, on a project to dramatize *Like a Family* and to stage performances in textile communities across North Carolina. Performance discussion moderator, Fall 1988.

Creative consultant to playwright Garry Lyons, "Plant Me a Garden," a play based on Southern Oral History Program interviews with North Carolina tobacco and textile workers; and background consultant to playwright Nancy Pahl Gilseman, "Mill Mother's Lament: The Story of Ella May Wiggins," a television script based on the life of Ella May Wiggins, balladeer and martyr of the 1929 textile strike in Gastonia, North Carolina, Summer 1984.

Local planning consultant, North Carolina tour of "Echoes in America," a play based on interviews with British cotton mill workers, Spring 1984.

"The Workers' World in Piedmont Mill Villages, 1880-1930," North Carolina Museum of History, Raleigh, North Carolina, May 21, 1989; Catawba County Historical Association, Newton, North Carolina, September 17, 1987; and Cary Jaycees, Cary, North Carolina, January 12, 1988.

"Like a Family: Life in North Carolina Mill Villages," *Tar Heel Junior Historian* 26 (Fall 1986): 15-19. The *Tar Heel Junior Historian* is a magazine for eighth-graders in the North Carolina public schools.

"Oral History and Local History," University of South Carolina at Lancaster, November 11, 1986.

"Learning by Listening: An Introduction to Oral History," Durham Academy, Durham, North Carolina, November 20, 1985.

"Labor in the New South," YMCA Faculty-Student Dinner Discussion Series, University of North Carolina at Chapel Hill, November 8, 1985.

Planning consultant and panelist, "The Charlotte Country Music Story," a two-day festival and conference presented by the North Carolina Department of Cultural Resources, Charlotte, North Carolina, October 25-26, 1985.

Research consultant, Legal Defense Fund, National Association for the Advancement of Colored People, and Chambers and Ferguson, Attorneys at Law, Charlotte, North Carolina, October-December, 1981. Conducted research for an historical brief in *Gingles v. Edmisten*.

TEACHER EDUCATION AND PUBLIC SCHOOL OUTREACH

Lead scholar, "The Culture of Textiles in North Carolina: Past, Present, and Future," North Carolina Humanities Council Teachers Institute, University of North Carolina, June 21-27, 2009.

"The Built Environment as a Source for Teaching History," Project for Historical Education, Department of History, University of North Carolina at Chapel Hill, December 6, 2008.

Administrative Board, Project for Historical Education, University of North Carolina at Chapel Hill, 1994-2002.

"Oral History and Southern Labor," University of North Carolina Summer Institute in the Humanities, a program for alumni of the North Carolina Teaching Fellows Program, Chapel Hill, July 12, 1994.

"Teaching North Carolina History," a weekend workshop for public school teachers, University of North Carolina at Chapel Hill, May 2, 1992.

Instructor, Workshop on Industrialization, "Critical Issues in History," a seminar for public high school teachers, North Carolina School of Mathematics and Science, Durham, North Carolina, July 11, 1989.

"The Workers' World in Piedmont Mill Villages, 1880-1930," North Carolina History Institute for Public School Teachers, North Carolina State University, Raleigh, North Carolina, June 28, 1987.

"Strategies for Effective Lecturing," Institute for Public School History Teachers, University of North Carolina at Chapel Hill, June 24, 1987.

Teaching Workshop, Department of History, University of North Carolina at Chapel Hill, 1986, 1987, 1990, 1993, and 1994.