

CITIZENSHIP IN NAME ONLY: THE COLORING OF DEMOCRACY WHILE REDEFINING RIGHTS, LIBERTIES AND SELF DETERMINATION FOR THE 21ST CENTURY

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In recent times there has been an explosion of interest in the concept of citizenship. This renewed theoretical focus was sparked by voter ID statutes and jury obstruction. Defining the term “full citizenship” as it relates to African Americans has been a focus of controversy since the writing of the U.S. Constitution. Do African Americans enjoy the status of full citizenship or is it in name only? This Essay examines two fundamental areas of citizenship: voting rights and jury participation. This Essay, through comparative analysis, will show deep rooted voting suppression tactics and present jury obstruction methods that impact African Americans and their full citizenship rights.

The jury system is one of the most important institutions of government. The right and duty to sit on a jury is granted to all adult citizens. Racial bias denies the defendant the right to a fair and impartial jury, and it denies citizens the fundamental right to participate fully in the judicial system. African Americans have been disproportionately excluded through pretextual peremptory challenges.

Moreover, lawmakers have embarked on a new voter suppression tactic: voter identification requirements. The tactic involves imposing new laws and rules requiring voters to show identification in order to vote, despite virtually no evidence of voter misidentification fraud. Identification requirements pose a special burden to the poor, racial minorities, and senior citizens who often do not have specific forms of identification. The pretextual color-blind race neutrality argument made by state legislators rings hollow when this nation’s history of voting obstruction is considered.

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I. INTRODUCTION

[The African] . . . was regarded and owned in every State in the Union as *property* merely, and as such was not and could not be a party or an actor, much less a *peer* in any compact or form of government established by the States or the United States. . . . [S]o far as rights and immunities appertaining to citizens have been defined and secured by the Constitution and laws of the United States, the African race is not and never was recognized either by the language or purposes of the former¹

Justice Daniel, Concurring Opinion
Dred Scott v. Sandford

Currently, there is an explosion of interest in the concept of citizenship. This renewed theoretical focus was precipitated by political events, voter ID statutes, jury obstruction and significant minority participation during the last presidential campaign. However, the definition of “full citizenship” as it relates to people of color, particularly African Americans, has been a focus of controversy since the enactment of the U.S. Constitution, which did not recognize African Americans as “citizens.” Do African Americans enjoy full citizenship status or is it in name only? More importantly, is their full citizenship status based on some legal invitation, or common assumptions and opinions of the majority? This Essay will address the question, how do we advance racial justice while addressing racial setbacks in a depressed economic environment?

If America does not view African Americans as full citizens, then efforts to exercise those citizenship rights become problematic. Dr. Martin Luther King, Jr. felt full citizenship encompassed two important concepts: 1) the right to vote, and 2) the right to be a full participant in the judicial process, such as the right to serve on a jury.² Only United States citizens can exercise these two privileges, privileges that are also a means to effectuate real change for African Americans in politics, the economy and our society.

Throughout history, racial bias has affected the economic and political standing of African Americans, particularly through denial of the right to vote and exclusion from the jury process. The United States Supreme Court has made it clear that the exclusion of people of color from the jury and voting polls is unconstitutional, and more importantly, undermines our judicial and political system.³

¹ *Scott v. Sandford*, 60 U.S. 393, 481–82 (1856) (Daniel, J., concurring), *superseded by* U.S. CONST. amend. XIII, § 1.

² Martin Luther King, Jr., “I Have a Dream,” Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963), *available at* http://mlk-kpp01.stanford.edu/kingweb/publications/speeches/address_at_march_on_washington.pdf.

³ *Strauder v. West Virginia*, 100 U.S. 303, 308–10 (1879), *abrogated on other grounds*, 419 U.S. 522 (1975); *see* U.S. CONST. amend. XV, § 1; U.S. CONST. amend. XIV, § 1.

This Essay analyzes from both a historical and modern day perspective how current race neutral voting laws, modern pretextual preemptory challenges, and exclusion tactics have and will continue to affect African Americans and their communities in the twenty-first century. This comparative analysis will show how deeply rooted voting suppression tactics and jury obstruction methods are still prevalent in our society, and how, if not properly addressed and resolved, they will retard and hinder the African American community's continued effort for full citizenship participation. This Essay will address full citizenship from these two perspectives: the concept of voting and its impact on participation in the jury process.

II. CITIZENSHIP IN NAME ONLY: REDEFINING DEMOCRACY

As it relates to people of color, citizenship has historically been a tool for exclusion instead of inclusion. This issue of full citizenship participation has been a recurring issue for the United States Supreme Court for over 200 years, with the Court repeatedly addressing the domestic discourse of citizenship and its legal interpretation. While the Court, even to this day, continues to hear cases that affect citizenship rights, conservative law makers continue to pass laws that affect voting rights and judicial participation. These two fundamental concepts are the core of full citizenship rights. The involuntary arrival of Africans to America may have resulted in the social and economic caste system that has been embedded in the minds of the majority, specifically the belief that the rights and privileges of some Americans are in name only and that African Americans are in America only by invitation. Despite amendments to the Constitution forbidding unequal treatment of its citizens, state legislators designed Jim Crow statutes, pretextual race neutral voting laws and arcane jury practices to circumvent the democratic process for African Americans—unequal treatment that persists today. This redefinition of democracy took complete hold after the end of Reconstruction. Rights granted pursuant to the Thirteenth, Fourteenth, and Fifteenth Amendments were largely ignored, with the new democracy defined by legal and social segregation. This make-believe citizenship status would have proven effective absent the Supreme Court's later intervention and interpretation of cases and statutes that applied to race.

However, early Supreme Court rulings were not favorable to African Americans. The *Scott v. Sanford*⁴ and *Plessy v. Ferguson*⁵ decisions only reinforced discriminatory practices and social inequality. In *Plessy*, the court upheld a statute of legal segregation, ignoring the provisions of the Fourteenth Amendment.⁶ The Court viewed African Americans as citizens in name, not in law. Justice Harlan, in his dissent, maintained that:

[I]n the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. . . . The arbitrary separation of citizens on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds.⁷

Furthermore, argued Harlan, the *Plessy* decision would poison relations between the races.⁸

⁴ *Scott*, 60 U.S. at 393.

⁵ *Plessy v. Ferguson*, 163 U.S. 537, (1896) (holding that railroad passenger carriage separated by race with equal accommodations was constitutional), *overruled by* 347 U.S. 483 (1954).

⁶ *Id.*

⁷ *Id.* at 559, 562.

⁸ *Id.*

What can more certainly arouse race hate, what can more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation.⁹

As Justice Harlan predicted, this subordinate citizenship doctrine has created a historical legacy for African Americans that is almost impossible to remove.

W.E.B. du Bois, a famous African American scholar, felt the passing of the Fourteenth Amendment did not inject any political life into the African American community.¹⁰ In his book, *Black Reconstruction*,¹¹ he contrasted the difference between political rights for African Americans and their ability to exercise rights and privileges granted to the majority.¹¹ Another group, U.S. citizens of Mexican ancestry, has also had its citizenship challenged in the past. During the early 1940's, Mexicans were allowed to work in the United States legally through several agricultural labor programs, with as many as 450,000 Mexican nationals working by the late 1950's.¹² However, many Mexican immigrants entered the United States illegally, and in an attempt to stop their entry, the U.S. government established "Operation Wetback," a government program designed to deport illegal Mexicans residing in the United States.¹³ However, because the government was racially profiling people of Mexican and Latin ancestry, many were arrested and again deported to Mexico despite being U.S. citizens because they could not show their citizenship status through documents.¹⁴

Presently, several U.S.-born children of illegal immigrants are suing Florida for denying them in-state tuition rates.¹⁵ Florida law states that the residency requirement must be established by the parents or dependent children prior to any in-state tuition pay rate.¹⁶ Tania Gallori, of the Southern Poverty Law Center, argues that the Florida law is misapplied and that residency requirements do not apply to the parents' citizenship status. Cassandra Romero, a student affected by the Florida law and enrolled at Palm Beach State College, said "I'm an American citizen, I was born here. But now I feel left out."¹⁷ By contrast, Republican Steve King, U.S. Representative from Iowa, led a charge against granting citizenship to children born in the United States of illegal immigrants.¹⁸ This position is contrary to the Fourteenth Amendment adopted in 1868, which says citizenship applies to all persons "born or naturalized in the United States."¹⁹

III. JURY PARTICIPATION: THE SYSTEMATIC EXCLUSION

⁹ *Id.* at 560.

¹⁰ W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICAN: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860–1880*, at 289 (1963).

¹¹ *Id.*

¹² Lorenzo A. Alvarado, *A Lesson from my Grandfather, the Bracero*, 22 *CHICANO-LATINO L. REV.* 55 (2001).

¹³ JUAN RAMON GARCIA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN AMERICA, UNDOCUMENTED WORKERS IN 1985*, at 229–31 (1980); *see also* JULIAN SAMORA, *LOS MOJADOS: THE WETBACK STORY* 52 (1971).

¹⁴ *Id.*

¹⁵ Alan Gomez, *U.S. Born Children Take Fight Over Tuition To Court, Fla. Denies In-State Rates To Illegal Immigrants' Kids*, USA TODAY, Nov. 11, 2011, <http://www.usatoday.com/news/education/story/2011-11-02/florida-lawsuit-education-in-state-tuition-illegal-immigrants/51050858/1>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. CONST. amend. XIV, § 1.

I looked around the courtroom. The judge was white. The prosecutor was white. My lawyer was white. The jury was white. Even though I was innocent I knew I had no chance.

Exonerated Death Row Prisoner

In 1880, shortly after Reconstruction, the Supreme Court case of *Neal v. Delaware* held that race would not be a factor in the jury selection process pursuant to the Fourteenth Amendment Equal Protection Clause.²⁰ However, most states in the South defiantly refused to allow African Americans to serve as jurors, seeing them as non-citizens.²¹ In the 1950's, Georgia jury commissioners prevented African Americans from serving on juries by using different colored tickets to identify potential black and white jurors.²² In 1998 in Georgia, the District Attorney sent a letter during a capital murder case requesting the jury commissioner to place as few African American jurors as possible in the potential jury pool for that case.²³ In 1935, the court clerk in *Norris v. Alabama* planned to eliminate African Americans from being selected for jury duty by placing "col" after their names.²⁴ In the Dallas County District Attorney's office in Texas, a training manual was uncovered in 1973 that instructed prosecutors to use their peremptory challenges to strike all people of color from the jury panel.²⁵ The manual instructed, "Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race, no matter how rich or educated."²⁶ In the 1990's, that same office trained its young prosecutors to circumvent any *Batson*²⁷ challenge by striking Blacks for allegedly "sleeping."²⁸ The manual instructed its prosecutors to ask potential black and white jurors different questions. Two years after the decision in *Batson v. Kentucky*, a prosecutor in the case of *Goggins v. State* struck black jurors pursuant to a jury selection training course.²⁹

In the Philadelphia District Attorney's office in 1987, a training tape was found that gave advice on how to use pretextual reasons for striking African Americans.³⁰ The tape offered detailed techniques and methods to decide a jury.³¹ The tape was titled *How to Pick a Jury* and presented by a former Philadelphia District Attorney.³² When discussing potential black women as jurors, the prosecutor stated,

²⁰ See *Neal v. Delaware*, 103 U.S. 370 (1880).

²¹ E. Earl Parson & Monique McLaughlin, *Black Strikes: The Focus of Controversy and the Effect of Race Based Peremptory Challenges on the American Jury System*, 3 GEO. J.L. & MOD. CRIT. RACE PERSP. 87, 91 (2011).

²² See *Avery v. Georgia*, 345 U.S. 559 (1953) (the use of white and yellow jury tickets for negro and white jurors); *Williams v. Georgia*, 349 U.S. 375, 380-81 (1955) (The Court held that the separation of negro and white jury participants "makes it easier for those to discriminate who are of a mind to discriminate." Not a single Negro was selected to serve on a panel of sixty, although many were available.).

²³ See *Amadeo v. Zant*, 486 U.S. 214 (1988).

²⁴ See *Norris v. Alabama*, 294 U.S. 587, 598-99 (1935). "Col" was an abbreviation of "colored."

²⁵ Steve McGonigle, et al., *Jurors' Race a Focal Point for Defense*, DALLAS MORNING NEWS, Jan. 24, 2006, <http://www.dallasnews.com/sharedcontent/dws/news/longterm/stories/082205dnprojurydefense.80317d4.html>.

²⁶ *Id.*

²⁷ *Batson v. Kentucky*, 476 U.S. 79 (1986) (The defendant, Batson, who is African American, was convicted of second-degree burglary and receipt of stolen property. The prosecution used peremptory challenges to remove all potential African American jurors and this produced an all-white jury. The defendant argued that the jury should be a cross-section of the community and this violated the Sixth Amendment and the Equal Protection Clause of the Fourteenth Amendment. The Jefferson County Circuit Court convicted him and the Kentucky Supreme Court affirmed the conviction. However, by a 7-2 vote, the U.S. Supreme Court reversed and remanded the lower court decision and held that the defendant's Fourteenth Amendment Equal Protection right was violated by purposeful discrimination pursuant to race.).

²⁸ McGonigle et al., *supra* note 25.

²⁹ *Goggins v. State*, 529 So. 2d 649 (Miss. 1988).

³⁰ Robert Dunham, *Death Penalty and Race: Partners in Injustice*, COUNTERPUNCH (Dec. 10, 2001), <http://www.counterpunch.org/dunham1.html>.

³¹ *Id.*

³² Jack McMahan, *How to Pick a Jury (or Fear of a Black Jury)*, HARPER'S MAG., July 2000, available at <http://www.social.mtu.edu/faculty/speters/fearofabackjury.htm>.

“Black women are very bad. There’s an antagonism. I guess maybe because they’re down-trodden in two respects—they’re women and they’re black and they want to take it out on somebody and you don’t want it to be you.”³³ When discussing black jurors in general, the prosecutor said, “Let’s face it, Blacks from the low-income areas are less likely to convict There’s a resentment of authority, and, as a result, you don’t want those people on your jury.”³⁴ The prosecutor further elaborated on potential black jurors, entering the room:

Another thing to do is when the forty people come in the room, count them. Count the blacks and whites. You want to know at every point in the case where you are. You’ll never get it just right—you don’t want to go: Is there a Black back there? Wait a minute. Are you a black guy?³⁵

That same office also conducted a jury seminar and taught, “[t]he ideal jury, 12 Archie Bunkers will convict on little evidence.”³⁶ Archie Bunker is a fictional sitcom character from the TV series, “All in the Family” that was popular in America in the 1960’s and 1970s. Archie was an older, white male, uneducated, blue-collar worker with bigoted and ignorant views, and’ who consistently made insensitive, stereotype-laced racial and gender comments for comic relief. “If you wanted, you could strike almost all Blacks. This gives you an advantage.”³⁷ This long-lived practice of judicial obstruction has allowed the courts, prosecutors and some defense lawyers to view African Americans as a hybrid citizen, who should not be allowed to participate in the judicial process as white citizens do. Prosecutors’ frustrations with the possibility that African Americans will identify with criminal defendants shows a deep-rooted bias against the African American community. Some prosecutors view African Americans as “shucking and jiving” when they walk, a strikable offence according to prosecutors.³⁸ Further, in the Philadelphia District Attorney’s office, researchers conducted a study from 1981 to 1997 on race-based jury selection.³⁹ The research showed that the District Attorney’s Office struck African Americans jurors twice as often as jurors of other races.⁴⁰ African Americans were struck at an even greater rate (three times as often as whites) in the District Attorney’s Office in Jefferson Parish, Louisiana, pursuant to a 2003 study by the Louisiana Crisis Assistance Center.⁴¹

A report published in 2010 by the Equal Justice Initiative examined patterns of unfairness in jury selection in eight southern states, including Louisiana.⁴² The report documented instances where prosecutors provided unlawful or suspect reasons for removing black jurors from venires. Prosecutors struck African Americans from jury service because they appeared to have “low intelligence,” wore eyeglasses, walked in a certain way, dyed their hair, and countless other reasons that courts rubber-stamped as “race-neutral.”⁴³ Some district attorneys’ offices trained prosecutors to exclude racial minorities from jury service and taught them how to mask racial bias to avoid a *Batson* violation.⁴⁴ In

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Dunham, *supra* note 30.

³⁷ *Id.*

³⁸ State v. Tomlin, 384 S.E.2d 707, 708–09 (S.C. 1989).

³⁹ See Dunham, *supra* note 30.

⁴⁰ *Id.*

⁴¹ Richard Bourke, Joe Hingston & Joel Devine, *Black Strikes: A Study of the Racially Disparate Use of Peremptory Challenges by the Jefferson Parish District Attorney’s Office*, LOUISIANA CRISIS ASSISTANCE CENTER 1(September 2003), http://www.blackstrikes.com/resources/report/black_strikes_report_september_2003.pdf.

⁴² *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy*, THE EQUAL JUSTICE INSTITUTE (August 2010), <http://www.eji.org/files/EJI%20Race%20and%20Jury%20Report.pdf>.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 6.

Houston County, Alabama, eight out of ten African Americans qualified for jury service were struck by prosecutors in death penalty cases. In Jefferson Parish, Louisiana, there was no effective African American representation on the jury in eighty percent of criminal trials.⁴⁵

In the Federal Circuit, a 1994 survey on the success rate of *Batson* challenges in seventy-six cases revealed that only three challenges were successful.⁴⁶ However, the most disturbing tactic is when prosecutors describe black jurors as having some type of direct or indirect criminal connection. It is a well-known practice during voir dire to ask during questions like: “Are any of your relatives drug dealers?” “Have any of your relatives been arrested?” “Have any of your relatives had any run-ins with police?”⁴⁷ In some jurisdictions over forty percent of Blacks defendants still find themselves facing an all-white jury.⁴⁸ The reason may be the lack of diversity in district attorneys’ offices and on state and federal courts. Despite the growing size of minority populations in America, ninety-eight percent of prosecutors are white in death penalty cases and ninety percent are white on the state and federal courts.⁴⁹ African Americans make up only six percent of judges in the United States.⁵⁰

Researchers on race and jury selection analyzed the behavior of the Philadelphia District Attorney’s office towards empaneled and excluded jurors from 1981 to 1997.⁵¹ The research showed a history of racial profiling in capital murder jury-selection cases.⁵² In Jefferson Parish, Louisiana, the District Attorney’s office struck Blacks three times as often as whites, as reported by the Louisiana Crisis Assistance Center in 2001.⁵³ In the capital murder trial of Albert Jefferson in Chambers County, Alabama, the prosecutor divided the potential jurors into four categories: “strong,” “medium,” “weak,” and “black,” and then removed all twenty-six of the Blacks from the “black” category.⁵⁴ An all-white jury convicted Mr. Jefferson, sentencing him to death.⁵⁵ In another criminal trial, Emanuel Fields was convicted by an all-white jury in Dallas, Texas.⁵⁶ In that trial, prosecutors struck an African American for having “gold teeth” and “wearing gold necklaces.”⁵⁷

North Carolina took a step toward eradicating racism in its local justice system with a newly enacted law, The North Carolina Racial Justice Act of 2009. The law states that a capital defendant could

⁴⁵ *Id.* at 5.

⁴⁶ Jere W. Morehead, *When a Peremptory Challenge is No Longer Peremptory: Batson’s Unfortunate Failure to Eradication Invidious Discrimination From Jury*, 43 DEPAUL L. REV. 625, 628 (1994).

⁴⁷ E. Earl Parson & Monique McLaughlin, *Black Strikes: The Focus of Controversy and the Effect of Race Based Peremptory Challenges on the American Jury System*, 3 GEO. J. L. & MOD. CRIT. RACE PERSP. 87, 96 (2011).

⁴⁸ Bryan A. Stevenson & Ruth E. Friedman, *Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice*, 51 WASH. & LEE L. REV. 509, 519 (1994) (describing the racial composition of juries in counties with significant African American populations).

⁴⁹ Rachel Lyon, Media, *Race, Crime and Punishment: Re-framing Stereotypes in Crime and Human Rights Issues*, 58 DEPAUL L. REV. 741, 752 (2009) (describing the racial composition of attorneys general in death penalty states).

⁵⁰ Pat K. Chew & Robert E. Kelley, *Myth of the Color Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 WASH. U. L. REV. 1117, 1125 (2009) (collecting data on racial makeup of the judiciary).

⁵¹ Dunham, *supra* note 30 (relating heightened rates of incarceration for African American defendants with discriminatory jury selection).

⁵² *Id.*

⁵³ Richard Bourke, Joe Hingston & Joel Devine, *Black Strikes: A Study of the Racially Disparate Use of Peremptory Challenges by the Jefferson Parish District Attorney’s Office*, LOUISIANA CRISIS ASSISTANCE CENTER (September 2003), http://www.blackstrikes.com/resources/report/black_strikes_report_september_2003.pdf.

⁵⁴ Stevenson & Friedman, *supra* note 48, at 523.

⁵⁵ *Id.*

⁵⁶ Holly Becka, Steve McGonigle, Tim Wyatt & Jennifer La Fleur, *‘I Just Felt Like I Was Lynched’: Man Convicted of Armed Robbery Says he Never Had Chance With White Jury After 5 Blacks Rejected*, DALLAS MORNING NEWS, Aug. 23, 2005, at 12A.

⁵⁷ *Id.*

state a claim under the act upon a finding that, “race was a significant factor in decisions to exercise peremptory challenges during jury selection.”⁵⁸ The first inmate to challenge his sentence under this act was Marcus Robinson, who has been on death row since 1994.⁵⁹ On April 20, 2012, Superior Court Judge Gregory Weeks ruled that Mr. Robinson was the victim of clear discrimination in jury selection.⁶⁰ Judge Weeks found “race was a significant factor in decisions to exercise peremptory challenges” in death-penalty cases in the state generally and in the county where Mr. Robinson was tried. Almost forty percent of county residents were black, yet the jury was made up of nine whites, two Blacks and one American Indian. Statewide, fifty-two percent of death row inmates are black, although Blacks only make up twenty-two percent of the state population. The judge found that “highly reliable” statistical evidence from a study by the Michigan State University College of Law showed racial discrimination in removing Blacks from juries in all but four of the state’s 100 counties. The study found that prosecutors used peremptory challenges to remove Blacks from juries at a rate more than twice that of whites, a disparity even more pronounced in the trials the researchers examined in Cumberland County and in Mr. Robinson’s trial in particular.⁶¹ Judge Weeks also found that state prosecutors “intentionally discriminated,” and called their arguments against personal bias “irrational,” “inaccurate” and “misleading.” Prosecutors have indicated they will appeal the decision.⁶² In response to the ruling Republican leaders in the General Assembly vowed to continue in their attempts to repeal the Racial Justice Act. The Republican House Speaker maintained that “The Racial Justice Act allowed a convicted murderer to evade justice and punish a suffering family. The leadership of the General Assembly will continue to work to repeal the Racial Justice Act and provide fair and just laws to ensure that only the guilty are punished.”⁶³ The Republican leaders made no mention of discriminatory peremptory challenge practices in their state or the laudable attempts to rectify this ongoing problem.

Obstruction of jury participation illustrates the insecure nature of full citizenship rights for African Americans, both in the ability to be judged by one’s peers and the right to sit on a jury. This notion of citizenship in name only has a historical and current context to African Americans exercising their right to full jury participation.

IV. THE NEW LANDSCAPE IN VOTING RIGHTS SUPPRESSION: REDEFINING VOTER ID LAWS AND ITS CHALLENGES

Private efforts to police the polls create a real risk of vote suppression, regardless of their interest.⁶⁴

In keeping with the theme and accoutrements of citizenship, one must look at voting as a mechanism to advance a citizen’s place in society. Although in many cases, voting is used by the majority to prevent the minority from exercising the rights of full citizenship. Along with jury participation, voting is limited only to United States citizens. Since Reconstruction, there has been a concerted and pervasive effort to block and to prevent minority citizenry from exercising their rights of citizenship in the voting booth. Recent efforts to prevent citizens from voting must be looked at through the prism of

⁵⁸ N.C. Gen Stat. §15A-2011(b)(3) (2011).

⁵⁹ Campbell Robertson, “Bias Law Used to Move a Man Off Death Row,” N.Y. TIMES, Apr. 20, 2012, at A1, available at <http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Craig Jarvis, *GOP will Continue to Fight Racial Justice Act, Leaders Vow*, CHARLOTTE OBSERVER, Apr. 21, 2012, available at <http://www.charlotteobserver.com/2012/04/20/3188167/gop-will-continue-to-fight-racial.html>.

⁶⁴ Ian Urbina, *Fraudulent Voting Re-emerges as a Partisan Issue*, N.Y. TIMES, Oct. 27, 2010, at A17, available at <http://www.nytimes.com/2010/10/27/us/politics/27fraud.html> (quoting Wendy Weiser of the NYU Brennan Center for Justice discussing efforts by groups in Houston to intimidate voters).

the long history of the United States in its attempts to preclude and disqualify minorities, particularly African Americans from voting, and thus, to dilute the African American's electorate and, in effect, to make African Americans second tier citizens in their own country. Without the vote, African Americans cannot participate in exercising their full citizenry or effect change to ensure their own prosperity.

In examining the old landscape of voting, southern states universally felt a compelling interest to protect their citizens against "unqualified" African American voters.⁶⁵ The proposed Fifteenth Amendment drew controversial debate by Congress of black inferiority as to the right to vote. Indiana Senator Thomas Henricks stated that newly freed slaves could not add to the political process.⁶⁶ Senator Willard Saulsbury, from Delaware, excluded African Americans from voting as a wish from God.⁶⁷ During this period, the most used obstruction tool was the literacy test. Registrars would ask African Americans questions that were impossible to answer and were used solely to exclude. For example, Blacks would be asked, "How many bubbles in a bar of soap?"⁶⁸ or "How many windows are in the White House?"⁶⁹

Historically, state officials invented race neutral voting standards with pretextual questions to eliminate African Americans from registering to vote. African Americans were subject to poll tax payments in advance and aforementioned absurd literacy tests as mechanisms for discrimination.⁷⁰ The insidious discrimination was perpetuated by registrars and state officials determined not to allow African Americans the right to participate in the voting process.⁷¹ In 1882, the mailbox system was adopted in South Carolina, requesting voters to use different boxes for different ballots.⁷² A voting reform method of secret ballots continued to frustrate uneducated individuals and systematically disenfranchised the African American vote.⁷³ Voting requirements of poll taxes, grandfather clauses, and literacy tests, all under an umbrella of color-blind voting regulations, were in actuality officials' selective procedures to discriminate.⁷⁴

Grandfather Clause laws allowed illiterate whites to continue to vote, while African Americans were foreclosed from voting.⁷⁵ In *Guinn v. United States*, the court held that "grandfather clauses" violated the Fifteenth Amendment.⁷⁶ The Supreme Court deemed this a corrective means for disenfranchised African Americans,⁷⁷ whose ancestors were slaves until 1863.

⁶⁵ FRANCIS D. ADAMS & BARRY SANDERS, *ALIENABLE RIGHTS, THE EXCLUSION OF AFRICAN AMERICANS IN A WHITE MAN'S LAND, 1619–2000*, at 192 (2003).

⁶⁶ALOYISUS LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM, RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* 169 (1996).

⁶⁷ *Id.*

⁶⁸ *Id.*; see also Herbert Brownell, Jr., Attorney General of the United States, Statement on the proposed Civil Rights Legislation before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee (Feb. 14, 1957), *available at* http://www.eisenhower.archives.gov/dl/civil_Rights_Civil_Rights_Act/StatementAGonCRLegislation14Feb57cover.pdf. In his presentation, he announced President Eisenhower's plan to create a bi-partisan commission to investigate voting irregularities.

⁶⁹ HIGGINBOTHAM, *supra* note 66.

⁷⁰ ADAMS & SANDERS, *supra* note 65, at 229.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Some of the first states to adopt such laws were Louisiana, North Carolina, Alabama and Virginia. Stephen J. Safranek, *Race and the Law, or How the Courts and the Law Have Been Warped by Racial Injustice*, 48 WAYNE L. REV. 1025, 1048 (2002) (describing the history of adoption of literacy tests for voting).

⁷⁶ *Guinn v. United States*, 238 U.S. 347, 357–58 (1915). The clause reads:

By 1957, Attorney General Brownell released shocking information that the registrar in Camden County, North Carolina, administered a different literacy test for black and white applicants. The registrar in Greene County, North Carolina, demanded that the African American applicants answer a series of questions, including, but not limited to, whether they were members of the NAACP and if that organization “attacked” the United States, would the black applicant participate. The white applicants were not required to answer such questions.⁷⁸

Under the 1965 Voting Rights Act, African Americans were given the full opportunity to exercise their full citizenship rights. This hallmark Act is considered the most successful Civil Rights legislation in history for African Americans. Over the past century, the United States Congress, through the Voting Rights Act, expanded the right to vote and knocked down innumerable barriers to full electoral participation. Since 2000, with tricks and intimidation tactics and, since 2010, with the first voter ID laws, that momentum to allow all citizens the unencumbered right to vote abruptly shifted. African Americans, after many years of exercising their right to vote, are now facing challenges in the voting process that are affecting their participation in the electorate system. Challenges to the African American vote include intimidation, trickery, and voter identification laws.

Recent attacks on African American voting rights began during the 2000 presidential election. The U.S. Commission on Civil Rights issued a report on discriminatory practices against African Americans on Election Day in Florida and found that thousands were denied the right to vote.⁷⁹ The report pointed out that African Americans were ten times as likely to have their ballots rejected than non-African Americans.⁸⁰ The report stated that about 14.4 percent of black voters’ ballots were rejected compared to 1.6 percent of non-black voters.⁸¹ The report’s data further stated, that African Americans made up eleven percent of all Florida voters, but fifty-four percent of the spoiled ballots, some 187,000, were of black voters.⁸² The data further indicated that eighty-three out of 100 precincts with spoiled ballots were from majority black precincts. These spoiled ballots were rejected and the votes were not counted.⁸³

In addition to claiming that African American ballots were spoiled, detractors have also used intimidation and tricks to rule the voting process. In Milwaukee, in November 2004, fliers were distributed in black neighborhoods under the false name of “Milwaukee Black Voters League.”⁸⁴ The fliers inaccurately pronounced that “anyone convicted of any offense, however minor, is ineligible to vote;” “if any family member has any conviction, it also disqualifies other family members from voting;”

No person shall be registered as an elector of this State or be allowed to vote in any election held herein, unless he be able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution. Precinct election inspectors having in charge the registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct election officer when electors apply for ballots to vote.

⁷⁷ *Id.*

⁷⁸ Brownell, *supra* note 68, at 6–7.

⁷⁹ *Voting Irregularities in Florida During the 2000 Presidential Election*, U.S. COMM’N ON C.R. (2001), available at <http://www.usccr.gov/pubs/vote2000/report/exesum.htm>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Steve Schultze, *Campaigns Condemn Political Flier, Paper Aimed at Black Voters Falsely States Voting Rules*, MILWAUKEE J. SENTINEL, Oct. 29, 2004, at B2.

and that “it’s too late for unregistered voters to vote.”⁸⁵ The flier further stated, “if these rules are violated, you are facing a conviction of ten years in prison and your children will be taken away from you.”⁸⁶ Also, in Milwaukee, in October 2010, a billboard showed people in jail and behind bars referencing “We voted Illegally.”⁸⁷

The billboard intimidation tactics are back for the 2012 election. Billboards that point out the penalties for voter fraud are appearing in predominantly African American communities in Ohio and Wisconsin, despite no evidence that voter fraud exists.⁸⁸ Thirty-three signs have cropped up in Milwaukee and Cleveland in predominately poor and African American sections of the state warning of the penalty for voting fraud.⁸⁹ Legal activists and community members say that the signs deliberately target and seek to intimidate Blacks and Hispanics, other minorities and the poor. “The billboards create a chilling effect,” said Marcia Johnson-Blanco, a co-director at the Lawyers’ Committee for Civil Rights.⁹⁰

During the 2004 elections in Allegheny County, Pennsylvania, fake fliers were distributed on official-looking paper telling Republicans to vote on Tuesday, November 2, 2004, and Democrats the next day.⁹¹ In Ohio, a memo also distributed on official looking Board of Election stationary, told voters they could not vote if registered by a NAACP voter drive.⁹² A fake letter purporting to come from the NAACP instructed voters in Charleston, South Carolina that they would be arrested if they voted with past due child support payments and unpaid parking tickets.⁹³ A candidate for office in Orange County, California sent fliers in Spanish to the Latino community prior to the November 2006 election stating: “You are advised that if your residence in this country is illegal or you are an immigrant, voting in a federal election is a crime that could result in jail time.”⁹⁴ In response to the flier, California’s Secretary of State, Bruce McPherson, mailed letters to the Latino community informing them that all U.S. citizens have a right to vote and stated that “voter intimidation in any form is completely unacceptable.”⁹⁵ A federal judge in East Texas issued an order during the November 2006 elections stopping the Attorney General and Texas election officials from prosecuting people of color for helping the elderly, the disabled and other minorities cast their vote.⁹⁶ The Lone Star Project called this behavior “a voter suppression scheme” designed to impart fear and intimidation. During the November 2006 elections, Latinos in Virginia and Colorado were told that their ancestry would make them ineligible to vote.⁹⁷ In 1988, Republican Assembly candidate Curt Pringle settled a civil rights suit for voter intimidations. Pringle posted “security guards” at predominately Latino voting stations in Orange County, California to prevent

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Urbina, *supra* note 64.

⁸⁸ Kim Palmer, *Democrats Cry Foul over Voter Fraud Billboards in Midwestern Cities*, REUTERS, Oct. 11, 2012, available at <http://in.news.yahoo.com/democrats-cry-foul-over-voter-fraud-billboards-midwestern-001448939--sector.html>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Jo Becker & David Finkel, *Now They’re Registered, Now They’re Not*, WASH. POST, Oct. 31, 2004, at A22, available at <http://www.washingtonpost.com/wp-dyn/articles/A12514-2004Oct30.html>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Robert Navarrett, Jr., *Commentary: Letter is Bid to Intimidate Latino Voters*, CNN, Oct. 23, 2006, <http://www.cnn.com/2006/US/10/23/navarrette/index.html>.

⁹⁵ Press Release, California Sec’y of State, California Secretary of State Bruce McPherson and Major Latino Organizations Send Official Election Letter Refuting Orange County Intimidation Letter (Oct. 25, 2006), available at http://www.sos.ca.gov/admin/press-releases/prior/2006/06_161.pdf.

⁹⁶ Terrence Stutz, *Prosecution of Voter Helpers Halted*, DALLAS MORNING NEWS, Nov. 2, 2006, http://www.wfaa.com/sharedcontent/dws/news/politics/local/stories/DN-abbott_02tex.ART.State.Edition1.3dfc5d0.html.

⁹⁷ John Stanton & Rebecca Plevin, *Democrats Allege That Calls to Latino Voters Have Threatened Arrest*, ROLL CALL, Nov. 7, 2006, available at http://www.prisonplanet.com/articles/november2006/071106_b_Democrats.htm.

non-citizens from casting ballots. In 2006, Republicans in New York challenged late registered voters by using a check challenge of sending police officers out to check listed addresses.⁹⁸

Now, Republican lawmakers and Tea Party organizers are trying to expand their political muscle by making it harder for minorities, the poor, and the elderly to exercise their right to vote in the 2012 presidential election.⁹⁹ These present voting obstruction tactics and oppressive voter ID laws are designed to reduce any chances for Democrats to remain in the White House. Republicans argue that voter ID laws correct and prevent voting irregularities.¹⁰⁰ Tea Party members are now planning to question voters at the polls as to their eligibility to vote. In October of 2010, Tea Party organizers announced a \$500.00 bounty would be paid to anyone who turns in a person who is prosecuted for voter fraud.¹⁰¹ A surveillance squad has also been established by the Tea Party to tape and photograph persons engaging in what they perceive to be suspicious voting irregularities.¹⁰² In some cases, they will follow buses that take voters to the polls. In response, liberal groups and voting-rights advocates are sounding an alarm and claiming that such strategies are scare tactics intended to suppress minority and poor voters.¹⁰³

These political groups have created an atmosphere of fear and intimidation in low-income and minority communities through tricks and scare tactics designed solely to suppress voting.¹⁰⁴ Their tactics have gained traction even after being universally repudiated by the legal academy. In 2001, the Association of Community Organization for Reform was instrumental in helping register about 1.3 million low-income and people of color to vote.¹⁰⁵ Due to conservative attacks on its methods, the organization closed in 2010.¹⁰⁶ Presently, organizations like the League of Women Voters and Houston Votes (a voter registration organization in Latino communities) have faced an incredible battle to register voters in light of the new oppressive voter ID laws.¹⁰⁷

Because of these intimidation tactics, voter registration is down in many states. In 2010 in Wisconsin, voter registration declined forty-three percent since 2006. In Florida, voter registration declined twenty-seven percent; in Ohio, voter registration was down twenty-five percent; in North Carolina registration declined twenty-eight percent, and in Maryland, voter registration declined twenty-one percent.¹⁰⁸

In thirty-four states, largely Republican legislation has been introduced requiring a photo ID to vote. Republican legislatures are increasingly imposing strict ID requirements for voters, ostensibly to deter in-person voter fraud. But voter fraud in general is rare and the type the legislation targets is "virtually non-existent" according to an extensive public-records search conducted by News21.¹⁰⁹

⁹⁸ Editorial, *An Untimely Voter Purge*, N.Y. TIMES, Nov. 1, 2006, at A 22 ("There is a process for investigating an accusation of voter fraud. It involves sending a letter to an address in dispute, and possibly following up with a police inquiry?").

⁹⁹ Editorial, *The Republican Threat to Voting*, N.Y. TIMES, Apr. 26, 2011, at A 26, available at <http://www.nytimes.com/2011/04/27/opinion/27wed1.html>.

¹⁰⁰ Urbina, *supra* note 64.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ E. Earl Parson & Monique McLaughlin, *The Persistence of Racial Bias in Voting: Voter ID, The New Battleground for Pretextual Race Neutrality*, 8 J.L. SOC'Y 75 (2007).

¹⁰⁵ Urbina, *supra* note 64.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Natasha Khan & Corbin Carson, *New Database of US Voter fraud finds no evidence that photo ID is Needed*, NEWS 21, Aug. 11, 2012, http://openchannel.nbcnews.com/_news/2012/08/11/13236464-new-database-of-us-voter-fraud-finds-no-evidence-that-photo-id-laws-are-needed?lite.

News21 election fraud database turned up ten cases of voter impersonation. With 146 million registered voters in the United States during that time, those ten cases represent one out of about every fifteen million prospective voters.¹¹⁰ “Voter fraud at the polls is an insignificant aspect of American elections,” said elections expert David Schultz, professor of public policy at Hamline University School of Business in St. Paul, Minnesota.¹¹¹ Yet, despite no evidence of voter fraud, Republicans are still pushing for voter ID laws. The only explanation for this is voter suppression. For example, in Pennsylvania, House Majority Leader Mike Turzai suggested that the House’s end game in passing the voter ID law was to benefit the GOP politically, saying that the passing of the voter ID law was designed to allow Governor Romney to win the state of Pennsylvania.¹¹²

One voter ID law, in Indiana, was upheld by the United States Supreme Court in 2008 on the grounds that as the process of getting an identification card was not burdensome.¹¹³ The Supreme Court found it compelling that Indiana’s voter ID cards are free and that “the inconvenience of making a trip to the DMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.”¹¹⁴ In addition, Indiana allowed those without a photo identification to cast a provisional ballot that would be counted if they executed an affidavit.¹¹⁵

An example of the burden of one state’s voter ID requirement is Wisconsin’s voter ID law, which was struck down at the trial court level.¹¹⁶ The opinion in that case spelled out a compelling argument why Wisconsin’s voter ID law is unconstitutional. The judge stated that the voter ID law created a new class of citizens that is barred from voting, specifically, those without the right form of state-mandated photo ID.¹¹⁷

The judge also found that the law’s restriction would fall disproportionately on those with the fewest resources to obtain an ID.¹¹⁸ The judge first examined Article III, Section 1 of the Wisconsin Constitution, which specifies who may vote in Wisconsin: “Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.”¹¹⁹ The judge further stated, “[t]he government may not disqualify an elector who possesses those qualifications on the grounds that the voter does not satisfy additional statutorily-created qualifications not contained in Article III, such as a photo ID,”¹²⁰ and “[b]y enacting Act 23’s photo ID requirements as a precondition to voting, the legislature and governor have exceeded their constitutional authority.”¹²¹

Act 23 in Wisconsin went “beyond mere regulation of elections. Its photo ID requirements impermissibly eliminate[d] the right of suffrage altogether for certain constitutionally qualified electors.”¹²² Thus, the judge found that Act 23’s photo ID requirements were unconstitutional because

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Kelly Cernetich, *Turzai: Voter ID Law Means Romney Can Win PA*, POLITICS PA (June 25, 2012), <http://www.politicspa.com/turzai-voter-id-law-means-romney-can-win-pa/37153/>.

¹¹³ *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202–03 (2008).

¹¹⁴ *Id.* at 198.

¹¹⁵ *Id.* at 199–200.

¹¹⁶ *League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, No. 11 CV 4669, 2012 WL 763586, at *8 (Wis. Cir. Ct. Mar. 12, 2012).

¹¹⁷ *Id.* at *5–6.

¹¹⁸ *Id.* at *7.

¹¹⁹ *Id.* at *1; see WIS. CONST. art. III, § 1.

¹²⁰ *League of Women Voters*, 2012 WL 763586, at *3.

¹²¹ *Id.* at *4.

¹²² *Id.* at *5.

they abridge the right to vote.¹²³ Evidence showed that “many constitutionally qualified electors from all walks of life will be blocked from voting at the polls by Act 23, involuntarily and occasionally through no fault of their own,”¹²⁴ causing an insurmountable burden to constitutionally-qualified electors.

Without question, where it exists, voter fraud corrupts elections and undermines our form of government. The legislature and governor may certainly take aggressive action to prevent its occurrence. But voter fraud is no more poisonous to our democracy than voter suppression. Indeed, they are two heads on the same monster.

A government that undermines the very foundation of its existence—the people's inherent, pre-constitutional right to vote—imperils its legitimacy as a government by the people, for the people, and especially of the people. It sows the seeds for its own demise as a democratic institution.¹²⁵

Over twenty-one million citizens do not have a government-issued ID in the United States.¹²⁶ These restrictive laws will disproportionately affect the poor, minority, elderly and Blacks. For example, the Brennan study indicated that twenty-five percent of African Americans do not have the required government-issued ID.¹²⁷ At the same time, in Texas, a voter ID law allows a person to produce a concealed hand gun license as proof of identify but will not allow a state university ID for proof of identity.¹²⁸ Moreover, ninety-two percent of all concealed handgun owners are non-African American.¹²⁹ Twelve states in 2011 have introduced proof of citizenship laws and bills to eliminate early voting, same-day voter registration, voting registration drives and Sunday voting.¹³⁰ These laws inhibit the efforts of many African American churches that organize “souls to the polls” drives, which allow their members to collectively go to the polls after Sunday services to vote.¹³¹

In battleground states for the 2012 election, Republican legislators have redefined citizenship and legal status to cast a vote. Government-issued ID requirements, the reductions in early voting and the imposition of new restrictions on voter registration drives, threatens citizens’ exercise of their full citizenship rights to participate in the political process by these new laws. In addition, the birther movement challenging President Obama’s citizenship status, as well as bills and laws addressing birthright citizenship for illegal immigrant children born in the United States, indicate a clear movement toward second-tier citizenship.¹³² Analysis by the Brennan Center shows that these new laws could affect 5 million eligible voters nationwide.¹³³

One must be a United States citizen in order to vote in America. Normally, one must also be at least eighteen years old and swear by affidavit that he or she is a United States citizen and meets all voting requirements. However, states are now requiring citizens to produce documents proving citizenship status.¹³⁴ These laws are a direct outgrowth of the Arizona legislation’s attack on Mexican

¹²³ *Id.*

¹²⁴ *Id.* at *6.

¹²⁵ *Id.* at *7.

¹²⁶ Wendy R. Weiser & Lawrence Norden, *Voting Law Changes in 2012*, BRENNAN CTR. FOR JUSTICE 2 (2011), available at http://brennan.3cdn.net/92635ddaefbc09e8d88_i3m6bjdeh.pdf.

¹²⁷ *Id.* at 24.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 2.

¹³¹ *Id.* at 33.

¹³² Marc Lacey, *Birthright Citizenship Looms as Next Immigration Battle*, N.Y. TIMES, Jan. 5, 2011, at A1, available at <http://www.nytimes.com/2011/01/05/us/politics/05babies.html>.

¹³³ Urbina, *supra* note 64.

¹³⁴ *Id.*

immigrants and the false perception that immigrants were voting illegally.¹³⁵ The Arizona bill, which was called Proposition 200 and went into effect in 2006, authorized officials to reject a voter's registration that was not accompanied by an application with citizenship documentation.¹³⁶

These proof of citizenship laws have arisen based on the growing immigrant population in states like Alabama, Georgia and South Carolina.¹³⁷ Again, the same recycled argument is used, that it will prevent non-citizens from registering to vote and will combat voter fraud. However, these laws will exclude a large portion of eligible voters who do not have ready access to citizenship documents.¹³⁸

With the resurrection of these old challenges to citizenship rights for African Americans, there is a growing concern of voter disillusionment. A 2006 Pew Research Center Report found African Americans were twice as likely to have no confidence in the voting process as from previous elections.¹³⁹ Another study in 2004 found that African Americans felt less confident than white voters that their votes were accurately counted.¹⁴⁰

With voter ID laws and other voting suppression tactics, the opportunities given by the Voting Rights Act may be in danger for the first time since its passage. The right to vote will always be an important conduit for economic property for all people of color.

V. THE NEW VISION OF CITIZENSHIP: SELF DETERMINATION FOR THE 21ST CENTURY

Well into the twenty-first century, the Supreme Court must still decide issues of citizenship for people of color. These issues should have already been decisively put to rest as they have been for other citizens of the United States. Today, no one would seriously contest white citizens' participation in the electoral process, their jury participation or any other exercise of their citizenship rights. Yet, as a nation, we are still wrestling with these issues for people of color. Our voting and jury institutions have profoundly shaped and molded our definition of black citizenship into the twenty-first century.

African Americans must be viewed on a universal level as "real" U.S. citizens, by law and by action, deserving all rights, liberties, opportunities and constitutional protections for full citizenship status. Jury exclusion and voter suppression are both barriers to full citizenship and, instead of reinforcing citizenship rights, create second-tier citizenship for people of color. Furthermore, stereotypes that people of color are associated with poverty, crime and welfare benefits continue to speak to a type of hybrid citizenship. African Americans must continue to exercise the right to vote on a much larger scale in conjunction with fighting new oppressive voter identification laws and jury discrimination. This method will allow African Americans to have more control of the political and judicial process.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Who Votes, Who Doesn't and Why: Regular Voters, Intermittent Voters, and Those Who Don't*, PEW RESEARCH CTR. (Oct. 18, 2006), <http://people-press.org/reports/display.php3?ReportID=292>.

¹⁴⁰ R. Michael Alvarez, Thad E. Hall, & Morgan Llewellyn, *American Confidence in Electronic Voting and Ballot Counting: A Pre-Election Update*, CALTECH/MIT VOTING TECHNOLOGY PROJECT (Nov. 3, 2006), at 4, available at http://www.vote.caltech.edu/sites/default/files/american_confidence_ev_bc.pdf.

