

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

THE CHRISTIAN MINISTERIAL
ALLIANCE, PATRICIA BREWER,
CAROLYN BRIGGS, LYNETTE BROWN,
MABLE BYNUM, and VELMA SMITH, on
behalf of themselves and all other similarly
situated persons,

Plaintiffs,

vs.

JOHN THURSTON, in his official capacity as
the Secretary of State of Arkansas,

Defendant.

CIVIL ACTION

Case No. 4:23-cv-471-DPM-DRS-JM

THREE-JUDGE PANEL

EXPERT REPORT OF RYAN A. SMITH

INTRODUCTION

I have been asked by attorneys for the Plaintiffs in the above-captioned case to offer my opinions on Arkansas's history of racial discrimination in voting. For my work, I am being compensated at the rate of \$125 per hour. My compensation is not contingent on or affected by the substance of my opinions or the outcome of this litigation.

QUALIFICATIONS

I am currently a PhD candidate in history at the University of Arkansas and an instructor of history and African American studies at Missouri State University in Springfield. I received my BA in history from the University of Central Arkansas in 2008 and an MA in history from Arkansas State University in 2017. My dissertation centers on the history of the Arkansas penitentiary system from its roots in the 1840s to the present. In particular, I focus on how the penitentiary system became a profitable institution in the 20th century, which stifled efforts by those inside and outside prison walls to effect reforms until a federal court declared the entire prison system in the state unconstitutional and imposed vast changes. This case was brought by a diverse group of inmates and, as such, my research is grounded in the reform efforts of inmates themselves.

For the last nine years, I have researched, taught, and written about United States and African American history, especially the long struggle for political and civil equality in the American South. As a native Arkansan, I have been specifically interested in these issues within my home state. I have published articles on Arkansas prison reformers, written a master's thesis

on women's prison reform in the state, and presented research at a variety of conferences. This is my first time being retained as an expert in litigation.¹

My curriculum vitae, including a list of all publications I authored in the previous 10 years is attached hereto as **Appendix I**.

ASSIGNMENT

I have been asked to give my assessment of Arkansas's history of racial discrimination in voting since the Civil War. In particular, I have been asked to determine if, and to what extent, the state has a history of racially discriminating against Black voters.

A list of the materials I considered in forming my opinions is attached hereto as **Appendix II**.

SUMMARY OF OPINIONS

As a historian, I am guided by the generally accepted standards of evidence and burden of proof among professionally-trained historians. I have consulted the existing secondary historical literature on Arkansas, particularly as it pertains to voting; newspaper articles, public and government documents, and court case briefs and decisions. Professional historians and scholars of the humanities and social sciences more broadly commonly rely on such sources, and I consider them in conversation with one another to offer an opinion, which is standard practice in the field.

Upon looking at the evidence, it is my opinion that Arkansas has a long history of limiting the power of Black voters. These efforts were taken up by both major political parties at

¹ Therefore, I have not testified as an expert at trial or by deposition in the previous four years.

different times and for different ends. Even after the passage of the Voting Rights Act of 1965, the state continued to engage in schemes to limit Black voting power and those efforts continue today. These efforts have been judicially-recognized,² and, thus, the evidence I present here is only some of that well-documented record.

OPINIONS

Arkansas has consistently sought to suppress Black voting since Black men were first granted the franchise (*i.e.*, the right to vote) in the Reconstruction state constitution in 1868. Despite federal efforts to protect Black voters—the Fourteenth, Fifteenth and Twenty-Fourth Amendments and the Voting Rights Act of 1965—those in power at the state level have sought workarounds to diminish Black political power. Through a process of almost constant and creative reinvention, state officials from both major political parties have implemented new schemes to prevent Black voters from access to the ballot or to greatly reduce their effect on elections. The result is that Arkansas is dead last in the nation in voter turnout and is one of the most difficult states in which to vote.

² See *Whitfield v. Democratic Party of State of Ark.*, 890 F.2d 1423, 1424 (8th Cir. 1989) (citing *Perkins v. City of W. Helena*, 675 F.2d 201, 211 (8th Cir. 1982), *aff'd* 459 U.S. 801 (1982)) (“The state has a history of official discrimination in its electoral process. Arkansas has used racially discriminatory voting practices such as statutory restrictions on the rights of blacks to vote, discriminatory literacy tests, poll taxes, a ‘whites only’ Democratic primary, segregated polling places, and at large elections.”); *Jeffers v. Clinton*, 730 F. Supp. 196, 210 (E.D. Ark. 1989) (Arkansas holds a “legacy of a history of discrimination, much of it governmental, beginning with the constitutionally sanctioned institution of human slavery.”); Consent Decree, *Hunt v. Arkansas*, No. PB-C-89-406, 1991 WL 12009081 (E.D. Ark. Nov. 7, 1991) (State of Arkansas admitted that judicial election procedures violated Section 2 of the Voting Rights Act by denying Black voters an equal opportunity to elect candidates of their choice); *Jeffers v. Tucker*, 847 F. Supp. 655, 659 (E.D. Ark. 1994).

I. ARKANSAS BEFORE EMANCIPATION

Slavery was late in coming to Arkansas. While there were some Black slaves in the state upon its admission to the union in 1836, it wasn't until the 1850s that large plantations began springing up along the Mississippi and Arkansas Rivers where conditions were ideal for cotton production, by far the nation's largest export. With the rise of plantations came planters and tens of thousands of enslaved Black persons. Free Black people were also present in the state when it joined the union but, following the lead of other states, Arkansas banned the in-migration of free Black people in 1843. By 1860, the state had banned the manumission of slaves³ and ordered the expulsion of free Black persons. While free Black Arkansans were not enslaved, they did not enjoy most of the rights given to the free white population, including the right to vote with no financial considerations attached. The free Black population declined from the state's founding in 1836 to the outbreak of the Civil War in 1861 while the state's enslaved population rose more than fifty-fold over the same period.⁴

II. RECONSTRUCTION AND BLACK POLITICS

Civil war, southern defeat, and emancipation upended the state's social order. All Black people were now legally free, but their political, economic, and social status was unequal. The end of slavery meant only that Black people could no longer by law be property, could not be

³ Manumission is the elective release of a slave or slaves by individual masters with or without compensation. Emancipation differs in that it refers to the broad freeing of slaves in an entire region, state, or nation.

⁴ Kelly Houston Jones, *A Weary Land: Slavery on the Ground in Arkansas* (Athens: University of Georgia Press, 2021); Georgena Duncan, "Manumission in the Arkansas River Valley: Three Case Studies," *Arkansas Historical Quarterly* 66 (Winter 2007): 422-443; S. Charles Bolton, *Fugitivism: Escaping Slavery in the Lower Mississippi Valley, 1820-1860* (Fayetteville: University of Arkansas Press, 2019).

bought or sold, and could not be forced to labor unless convicted of certain crimes. However, they had few guaranteed political rights. For example, the state did not extend voting rights to Black men, barred Black people from certain occupations, and prohibited interracial schooling.⁵

Soon, however, large planters regained control of their land and put Black people back to work—not as slaves but as sharecroppers. Under the sharecropping system, a tenant works a plot of land owned by a large planter who provides all the necessary capital. At harvest, the tenant is required to turn over a specific amount of the crop (typically half) to the planter as payment. Black people were disproportionately affected by the sharecropping system. To solidify it, the state legislature, then dominated by former secessionists, passed a law in 1867 that required tenants to sign written labor contracts with landowners and barred them from breaking or leaving such contracts on pain of arrest for vagrancy, a practice that mirrored the system in Mississippi and South Carolina. Over time, this system locked many Black Arkansans into cycles of debt that prevented them from ever leaving the plantations at which many of them had been enslaved people.⁶

A. Enfranchisement of Black Men

The same year Arkansas passed the labor contract law, Radical Republicans took control of Congress and wrested control of Reconstruction from President Andrew Johnson. They divided the south into five military districts, and Arkansas joined Mississippi in the Fourth District. They also passed the Reconstruction Acts, which required southern states to adopt the Fourteenth Amendment granting citizenship to Black individuals (and to anyone else born or

⁵ Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994); William P. Kladky, “Post-Bellum Black Codes” in *Encyclopedia of Arkansas*, last modified December 7, 2021, <https://encyclopediaofarkansas.net/entries/post-bellum-black-codes-5997/>.

⁶ Moneyhon, *Impact*.

naturalized in the United States), prohibited most former Confederates from voting or holding office, and provided for universal male suffrage before these states could reenter the union. In January 1868, delegates from Arkansas—most of whom were Republicans aligned with Radical Republicans at the national level, and eight of whom were Black—met and drafted a new state constitution that granted citizenship and voting rights to Black men as ordered under the terms of the Reconstruction Acts. It also guaranteed all rights of citizenship without regard to race, color, or previous condition of servitude and established free public education. Arkansas was granted readmission to the union in June of the same year.⁷

B. Violence Against Black Political Activity

Almost immediately following the ratification of the 1868 constitution, challenges to Black voting rights came via extralegal means. The Ku Klux Klan, initially founded as a fraternal organization in Tennessee, made its first appearance in Arkansas in April 1868 and essentially came to be the paramilitary arm of white supremacy and the Democratic Party in the state. Klan members tortured and killed dozens of Black people and white Republican allies to keep them from exercising political power. During the 1868 election, Klan violence reached its zenith in the state when Klansmen harassed and intimidated likely Black voters at registration drives. The Klan centered its campaign in southern and eastern counties where the Black population was highest.⁸

⁷ Mark K. Christ, ed., *A Confused and Confusing Affair: Arkansas and Reconstruction* (Little Rock: Butler Center Books, 2016); Moneyhon, *Impact*; Thomas A. DeBlack, “Civil War through Reconstruction, 1861-1874,” *Encyclopedia of Arkansas*, last modified June 6, 2024, <https://encyclopediaofarkansas.net/entries/civil-war-through-reconstruction-1861-through-1874-388/>

⁸ Christ, *Confused*; Moneyhon, *Impact*.

Powell Clayton, Arkansas's Republican governor inaugurated in July 1868, spearheaded an intense drive to stamp out the Klan. Klan violence had made voter registration nearly impossible in many Black-majority counties. Clayton instituted martial law the day after the 1868 election in fourteen counties where violence against Black voters was high, divided the state into four military districts, and placed members of the state militia at specific spots where Klan activity was highest. Violence erupted between Klan members and the state militia regiments—a large number of them Black—in the following months but eventually martial law was lifted in March 1869 once the Klan had ostensibly disbanded. The number of deaths is unclear, but estimates are in the hundreds. Despite the end of the Reconstruction Klan in the state, violence against Blacks exercising political power continued.⁹

Republicans, however, feared that southern Democrats might take control of one or both houses of Congress in the next election, as more former Confederates were gaining access to the ballot in southern states. If they hoped to maintain a presence in the south, Republicans would have to extend the franchise to Black men via constitutional amendment. However, broader, more sweeping proposals—such as ones to ban poll taxes and literacy tests—failed after congressional debate and the party settled on an amendment that barred restrictions from voting on the basis of “race, color, or previous condition of servitude.” This law passed both houses of Congress along party lines with all Congressional Democrats voting against it. Still, the Fifteenth

⁹ Virginia Buxton, “Clayton’s Militia in Sevier and Howard Counties,” *Arkansas Historical Quarterly* 20 (Winter 1961): 344-350; Moneyhon, *Impact*. Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1971).

Amendment, for a time, enfranchised very large numbers of Black men in the south and across the nation, most of whom had been enslaved only a decade earlier.¹⁰

III. REDEMPTION AND CHANGES TO ARKANSAS ELECTION LAWS

With the ratification of the Fourteen and Fifteenth Amendments, Black migration to Arkansas drastically increased and outpaced any other state in the country over the next few decades. As such, Black political participation exploded after 1870, and dozens of Black men were elected to both houses of the state legislature. They also held county and municipal offices, especially in areas with high Black populations.¹¹

But Clayton's heavyhanded response to Klan violence and the influx of Black people left many white people resentful and soon divided the Republican Party within the state. Tensions reached their height in the election for governor in 1872. Clayton, who had been selected by the state legislature to join the U.S. Senate, threw his support behind Elisha Baxter, a former state legislator, while the more conservative wing of the party joined with the state's Democrats in supporting Joseph Brooks, a former chaplain to the U.S. Colored Troops. Baxter was declared the winner by the state's Republican-dominated legislature, but there was evidence of widespread fraud against Black voters, leading to an outbreak of violence in the so-called Brooks-Baxter War. Eventually President Grant was forced to intervene and order Brooks's supporters to stand down. In 1874, with former Confederates allowed to vote again, the state

¹⁰ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: Norton, 2019).

¹¹ Story Matkin-Rawn, "'The Great Negro State of the Country': Arkansas's Reconstruction and the Other Great Migration," *Arkansas Historical Quarterly* 72 (Spring 2013): 1-5; Blake J. Wintory, "African-American Legislators in the Arkansas General Assembly, 1868-1893," *Arkansas Historical Quarterly* 65 (Winter 2006): 384-434.

overwhelmingly called for a new constitutional convention and restored Democrats to power with the governorship and huge majorities in both of the state houses. The state had been “redeemed” from “Negro rule,” and Reconstruction in Arkansas was effectively over.¹²

At the 1874 state convention, delegates drafted a constitution that severely limited the power of the state government in favor of county and city governments but did not directly deal with issues of voting. However, the state’s Democratic Party was beginning to face real threats from Republicans allied with populist third parties like the Grange, Greenbackers, and the Agricultural Wheel. Farmers and laborers were increasingly dissatisfied with the Democratic Party’s cozy relationship with the wealthy and their stranglehold on power. These groups often allied with Black Arkansans to challenge Democratic control of the state. In response, those at the levers of the state government began limiting the voting rights of Black people to suppress these threats to their power.¹³

In 1873, the state made the theft of any property with a value of more than \$2 (roughly \$60 in 2024) a felony, and thus ineligible to vote. This law targeted Arkansas’s poor who were disproportionately Black. As most Black Arkansans were sharecroppers and among the poorest in the state, they were those most likely to steal out of desperation. And with Black individuals barred from serving on juries or testifying against white persons under state law, Black

¹² Thomas A. DeBlack, *With Fire and Sword: Arkansas, 1861-1874* (Fayetteville, University of Arkansas Press, 2003); Earl F. Woodward, “The Brooks and Baxter War in Arkansas, 1872-1874,” *Arkansas Historical Quarterly* 30 (Winter 1971): 315-336.

¹³ Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001); Matthew Hild, *Greenbackers, Knights of Labor, and Populists: Farmer-Labor Insurgency in the Late-Nineteenth Century South* (Athens: University of Georgia Press, 2007); Kenneth C. Barnes, *Who Killed John Clayton?: Political Violence and the Emergence of the New South, 1861-1893* (Durham, NC: Duke University Press, 1998).

defendants were convicted and sentenced with ease. Hundreds of Black citizens were now completely disenfranchised, even if they had completed their sentence and been released.¹⁴

Arkansas had never required a voter to be literate to cast a ballot, and since most ballots in the 1800s were color-coded by party or had pictures of the party's major candidate (like the gubernatorial or presidential candidate) at the top of the ballot, voting for all candidates of a particular party was not difficult for those who could not read. Indeed, voting was done in public rather than in a booth, allowing illiterate voters to easily receive assistance with voting if needed. But the state added barriers with its 1891 Election Law, and instituted for the first time the secret ballot. Illiterate men could still vote, but they had to jump through hoops—such as getting two precinct judges to clear out a polling location and prepare a special ballot—to access the franchise. Ballots were no longer color-coded nor did they contain images of major candidates. The result was the effective disfranchisement of almost all illiterate Black men in the state. According to the 1900 census, that was as much as 75% of the state's Black male population of voting age. By contrast, only 15% of the state's white men of voting age were illiterate.¹⁵

Beginning in the 1890s, southern states called new constitutional conventions to erect barriers to Black male suffrage while protecting that of white males. These included poll taxes, literacy tests, and grandfather clauses.¹⁶ Arkansas did not call a new convention, but it did follow other southern states in instituting a \$1 poll tax in 1893. This was a massive barrier when the

¹⁴ Chris M. Branum, "Another Look at Disfranchisement in Arkansas, 1888-1894," *Arkansas Historical Quarterly* 69 (Autumn 2010): 245-262; Perman, *Struggle for Mastery*; J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, CT: Yale University Press, 1974).

¹⁵ Branum, "Another Look."

¹⁶ Grandfather clauses allowed men to vote if their grandfather had been able to vote even if they could not pass a literacy test or pay a poll tax. Since the overwhelming majority of Black people before the Civil War were enslaved, Black men in the 1890s were not granted voting rights under grandfather clauses. Most white men, even those who were poor and illiterate, could.

average annual wage for an Arkansan in the 1890s was just over \$500, and because Black people were among the poorest in the state, their wages were even lower. In addition, Black sharecroppers rarely dealt with cash at all as they most often paid for goods with crops and/or were locked in cycles of debt with landowners. At the same time, the state's Democratic political machine commonly paid poor whites' poll taxes. This, effectively, disenfranchised many of the Black men who were literate but could not afford the \$1 poll tax.¹⁷

IV. **BLACK POLITICAL ACTIVITY AND VIOLENT BACKLASH**

Despite the massive barriers placed in their ways by the state government, some Black people were able to overcome these barriers to elect Black candidates. Before the secret ballot and poll tax, some 84 Black men served in the Arkansas state legislature. The peak of Black representation in 19th-century Arkansas was in 1873 when sixteen Black men served in the Arkansas House of Representatives and seven in the Arkansas Senate. These men were overwhelmingly Republicans, although some aligned with third parties such as the Greenbackers and Agricultural Wheel. Even throughout this period, though, Black people faced extralegal violence at the hands of vigilante whites if they participated in any political activity. In the decades following the collapse of Reconstruction, white mobs intimidated, harassed, beat, and even murdered Black people who attempted to vote or to vote for Republicans or third parties allied with Republicans. Landowners were known to threaten tenants and those with debts owed to vote for Democratic candidates or face expulsion or worse.¹⁸

¹⁷ John William Graves, "Negro Disfranchisement in Arkansas," *Arkansas Historical Quarterly* 36 (Autumn 1967): 199-225; Branum, "Another Look."

¹⁸ Wintory, "African American Legislators"; John William Graves, *Town and Country: Race Relations in an Urban-Rural Context, Arkansas, 1865-1905* (Fayetteville: University of Arkansas Press, 1990).

By the end of the 19th century, the Democratic Party had a chokehold on power at the state level. Although most Black Arkansans were effectively disenfranchised beginning in 1893, a small number continued to vote or attempt to vote. Some tried to effect change within the Democratic Party itself by voting for friendlier candidates in primaries. The state legislature, though, fearing threats to their power and the Democratic machine, implemented the white primary—which only allowed white persons to vote in party primaries—in 1906. The state could introduce explicitly racial language into such laws because party primaries were not protected by the Fourteen and Fifteen Amendments.¹⁹

The first half of the 20th century saw Black voter participation in state politics collapse and violence against them increase dramatically. Violence was most explicitly manifested via lynching: extralegal murder without due process of law ostensibly guaranteed by the Fourteenth Amendment. The first recorded lynching in Arkansas occurred in 1836, but the height of lynching was between the 1890s and 1920s. Most often, Black men were accused of sexually harassing or raping a white woman, leading mobs of white people to take vigilante action. In reality, there were other motivations involved that led to lynching—Black political activity, labor organizing, economic success, assertion of social or civil rights, and more. Lynchings occurred in public so as to terrorize other members of the local Black community and dissuade them from exercising any rights of citizenship at all, particularly political power. Richard Buckelew has estimated that at least 230 lynchings of Black people occurred in Arkansas, but as scholars continue to study racial violence in the state the number continues to increase.²⁰

¹⁹ Fon Louise Gordon, *Caste and Class: The Black Experience in Arkansas, 1880-1920* (Athens: University of Georgia Press, 2007).

²⁰ Karlos Hill, *Beyond the Rope: The Impact of Lynching on Black Culture and Memory* (New York: Cambridge University Press, 2016); Richard Buckelew, “Racial Violence in Arkansas: Lynchings and Mob Rule, 1860-1930,” PhD dissertation, University of Arkansas, 1999.

Beginning at the turn of the 20th century, women's groups in Arkansas, like Women's Christian Temperance Union, pressed the state legislature to extend the right to vote to women. These efforts failed and Arkansas women had to wait for federal intervention. In 1920, the Nineteenth Amendment was ratified, giving women the right to vote nationally. But even after the ratification of the amendment, most Black women remained effectively disenfranchised for the same reasons as Black men. They would have to wait for the civil rights movement of the 1960s to gain the franchise, because only a small fraction of Black women voters were eligible and financially able to vote under the state's restrictive and discriminatory voting regime.²¹

V. ENDING THE WHITE PRIMARY AND POLL TAX

In *Smith v. Allwright*,²² the United States Supreme Court ended the white primary because it discriminated against non-white voters. Black political participation soared, and in 1948, Black voters turned out in huge numbers for the Democratic primaries in the state. The Democratic party continued to suppress Black voting, but at the national level, the party was moving toward embracing civil and political rights for Black people. Beginning with the Great Depression and Franklin Roosevelt's promise of a New Deal in 1932, Black people in areas of the country where voting was possible began to abandon the party of Lincoln and emancipation in favor of the Democratic Party. Most New Deal legislation excluded most Black people, such as the Wagner Act and the Social Security Act, but certain elements did ameliorate the devastation of the Depression for them. In addition, the party signaled it was moving in a new direction, at least at the national level, with FDR's Executive Order (EO 8802) barring discrimination in defense

²¹ Arkansas Historical Association, "Arkansas Women: Race, Reform, and the Right to Vote," Special Issue, *Arkansas Historical Quarterly* 79 (Autumn 2020).

²² 321 U.S. 649 (1944).

industries, opening the Army Air Corps to Black soldiers, and integrating Officer Candidate Schools. In 1948, FDR's successor, Harry Truman, integrated the entire military with Executive Order 9981.²³

Black Arkansans were crucial in getting Sidney McMath nominated for governor in 1948. McMath was a WWII veteran and a political reformer with ties to the Black community, who had a more progressive agenda for civil rights. But the state's Democratic machine argued with no evidence that there was massive voter fraud and began investigating Black political activists, especially Wiley Branton, a twenty-four-year-old WWII veteran and native of Pine Bluff. Branton had encouraged Black voters in Pine Bluff to pay poll taxes if they could afford it and distributed sample ballots to instruct them on how to vote in the Democratic primary. He was tried and convicted of violating a 1935 state election law—the jury determined that printing sample ballots, showing voters how to mark ballots, and educating them on the voting process was tantamount to voter intimidation. He appealed to the Arkansas Supreme Court, which upheld the lower court decision. Branton, who later would be central to integrating the University of Arkansas School of Law, was ordered to pay a \$200 fine.²⁴

By the mid 1950s, Arkansas was one of only five states that still charged a poll tax. A proposed state constitutional amendment to end the tax failed in 1938, and reformist governors, beginning with Sid McMath could not muster support in the legislature to repeal the poll tax law. But a collection of various interest groups such as the League of Women Voters and the Arkansas

²³ *Smith v. Allwright*, 321 U.S. 649 (1944); Harvard Sitkoff, *A New Deal for Blacks: The Emergence of Civil Rights as a National Issue: The Depression Decade* (New York: Oxford University Press, 1978); Nancy J. Weiss, *Farewell to the Party of Lincoln: Black Politics in the Age of FDR* (Princeton, NJ: Princeton University Press, 1983).

²⁴ *Branton v. State*, 214 Ark. 861 (1948) (Arkansas Supreme Court decision); Judith Kilpatrick, *There When We Needed Him: Wiley Austin Branton, Civil Rights Warrior* (Fayetteville: University of Arkansas Press, 2007).

Education Association lobbied to get another amendment on the ballot to replace the tax with a voter registration system in 1964. That effort was successful the same year that enough states ratified the Twenty-Fourth Amendment, ending the practice nationwide. The poll tax was replaced by a voter registration system.²⁵

VI. THE VOTING RIGHTS ACT OF 1965

Civil rights legislation reached its height with the passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965 (the “VRA”). The VRA barred both *de jure* and *de facto* discrimination based on race or color in voting. Literacy tests were prohibited as were various schemes to make voting harder for illiterate people like those in Arkansas described above. Parts of the VRA applied only to certain jurisdictions with histories of recalcitrant discrimination. These jurisdictions were required to gain federal approval before making changes to their voting laws.²⁶

No jurisdiction in Arkansas was included among the VRA’s special provisions as the state did not have a “test or device” that limited one’s right to vote, like a literacy test. The previous year, though, the Supreme Court held in *Reynolds v. Sims*²⁷ that state electoral districts must be relatively equal in population, and Arkansas was required to redraw its map for intrastate representation. The VRA and the *Reynolds* decision led to a massive increase in voter registration, including among Black people in Arkansas.

²⁵ Calvin R. Ledbetter, Jr., “Arkansas Amendment for Voter Registration with Poll Tax Payment,” *Arkansas Historical Quarterly* 54 (Summer 1995): 134-162.

²⁶ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

²⁷ 377 U.S. 533 (1964).

V. POLITICAL REALIGNMENT

The civil rights era led to a massive political realignment in the South as white Arkansans came over several decades to abandon the Democratic Party, particularly at the federal level. With the exception of Dwight Eisenhower from 1953-1961, Republicans had not held power since FDR's first term beginning in 1933. In 1964, the party's conservative wing successfully nominated Barry Goldwater over the preferred candidate of the more liberal wing of the party, Nelson Rockefeller. Goldwater called for the repeal of the 1964 Civil Rights Act as an unconstitutional abuse of federal power and signaled disdain for the federal intervention that had been necessary to integrate public institutions and private accommodations. Five other states in the deep south that had never before supported a Republican presidential candidate voted for Goldwater. Although trounced in the electoral college and the popular vote, Goldwater's candidacy were the first signs of a major political realignment in the making.²⁸

Richard Nixon's candidacy solidified the party's rightward turn. Nixon employed what historians have termed the "southern strategy": appealing to southerners' animosity toward civil rights through federal intervention without using explicitly racialized language. The election of 1968 was a three-way match between Nixon, Hubert Humphrey, and George Wallace. Wallace had made a name for himself as the nation's leading challenger to civil rights by attempting to prevent the integration of the University of Alabama as governor. Wallace won four of the five states Goldwater had won in 1964—he also won Arkansas. Wallace garnered 38% of the vote while Nixon, who came in second, won 31%. In total, 69% of Arkansans supported someone other than a Democratic candidate. It was the first time the state had not supported a Democrat

²⁸ Angie Maxwell & Todd Shields, *The Long Southern Strategy: How Chasing White Voters in the South Changed American Politics* (New York, Oxford University Press, 2019).

for president since 1872. Nixon won the state in 1972, Reagan won it in 1980 and 1984, and Bush carried it in 1988. The state was turning red, at least in national contests.²⁹ With the exceptions of 1992 and 1996, when former Arkansas Governor Bill Clinton was the Democrat nominee for President, the Republican candidate for President carried Arkansas in every Presidential election in the forty years since 1980.³⁰

At the state level, the Democratic Party remained in power, but it was becoming more pragmatic on issues of civil rights. Governors Dale Bumpers, David Pryor, and Bill Clinton all appealed to the Black community and enjoyed their solid support. All three candidates also enjoyed broad support among white Arkansans. Their “Third Way” program and the turn toward more moderate positions signaled that Black voters were crucial to the state’s Democratic Party. This remained true until the late 1990s when Republicans began winning offices at the state and national level.³¹

Arkansans began electing Republicans to statewide offices on a more frequent basis beginning with Governor Mike Huckabee in 1998. When Bill Clinton was elected president in 1992, his lieutenant governor, Jim Guy Tucker, replaced him as governor. Tucker was easily reelected in 1994. But Tucker was implicated in the Whitewater scandal that also plagued the Clinton administration, and was forced to resign in 1996. Thus, Huckabee—a Southern Baptist minister and Republican who was barely elected to the lieutenant governorship in a special election in 1993—became the state’s governor, only the third Republican since Reconstruction.³²

²⁹ Maxwell & Shields, *Long Southern Strategy*.

³⁰ John C. Davis, *From Blue to Red: The Rise of the GOP in Arkansas* (Fayetteville: University of Arkansas Press, 2024).

³¹ Davis, *From Blue to Red*.

³² Steve Barnes, “Arkansas Governor Resigns After Furor,” *New York Times*, July 16, 1996.

When Huckabee ran for reelection in 1998, he easily defeated Democrat Bill Bristow. What was most interesting about his election were exit polls that showed Huckabee winning nearly 48% of Black voters in the state. Some experts have questioned this statistic, but Huckabee did win many counties along the Mississippi Delta with large Black populations along with Pulaski County.³³

The move toward Republican control of statewide and federal offices began in earnest in 2010 when Democrats held all federal offices but one, all statewide constitutional offices, and majorities in both of the state houses. Over the next five years, Republicans captured all four congressional districts, both senate seats, all statewide offices, and large supermajorities in both houses of the state legislature. It was what political scientist John Davis calls “one of the fastest, most powerful statewide political waves in the United States.” Republicans continue to hold these offices today.³⁴

VII. CHALLENGES TO REPRESENTATION UNDER THE VRA

Despite its not being among the jurisdictions required to submit apportionment maps to the U.S. Justice Department for pre-clearance, Arkansas has seen several challenges to redistricting under the VRA since its passage. After the state passed an apportionment plan in 1981, Black leaders filed suit arguing that the new plan violated Section 2 of the VRA and the Fourteenth and Fifteenth Amendments because it harmed Black voters by splitting Black communities into numerous districts with precision. They also noted that no Black legislator had

³³ “Ahead of Debate, Huckabee’s Claim of Black Support Questioned,” *Arkansas News*, September 26, 2007 (Archived, <https://web.archive.org/web/20150923194725/http://archives.arkansasnews.com/2007/09/26/ahead-of-debate-huckabees-claim-of-black-support-questioned/>).

³⁴ Davis, *From Red to Blue*, quote on page 1.

ever been elected from a district that was not majority-minority. In *Jeffers v. Clinton*,³⁵ a federal court agreed and ordered the creation of several majority-minority districts in the state. The result was the creation of three senate and thirteen house districts with high Black populations and the election of several Black legislators, many of whom came from areas of the state that had not sent a Black representative to the state legislature since Reconstruction.

That same court ruled in *Smith v. Clinton*³⁶ that majority-minority districts must have a Black voting age population of at least 60% to conform to the VRA. Black leaders have sued the state with mixed success several times because districts fell below that standard. They have also challenged other ways that the state has harmed Black voters, such as in statewide contests for Arkansas Supreme Court justices.³⁷

In 2021, civic organizations also challenged the Arkansas Board of Apportionment's reapportionment of state house districts under Section 2 of the VRA. The Court in that case explained that "[f]rom what the Court has seen thus far, there is a strong merits case" but that only the Attorney General of the United States could bring a challenge under the VRA.³⁸

Arkansans have also shown interest in making the process of drawing congressional maps more transparent. In 2020, activists collected more than 150,000 signatures to place a measure on that year's ballot to create the *Citizens' Redistricting Commission* whose members would be charged with drawing district maps. Commissioners could not have been an elected or appointed

³⁵ 730 F. Supp. 196, 211 (E.D. Ark. 1989).

³⁶ 687 F. Supp. 1361 (E.D. Ark. 1988)

³⁷ E.g., *Smith v. Clinton*, 687 F. Supp. 1361 (E.D. Ark. 1988); *Jeffers v. Beebe*, 895 F. Supp. 2d 920 (E.D. Ark. 2012); *Jeffers v. Tucker*, 847 F. Supp. 655 (E.D. Ark. 1994); *Larry v. Arkansas*, No. 4:18-CV-00116-KGB, 2018 WL 11579909 (E.D. Ark. Oct. 12, 2018); *Wilson v. Huckabee*, No. 2:06CV00132WRW, 2008 WL 360617 (E.D. Ark. Feb. 8, 2008).

³⁸ *Arkansas State Conference NAACP v. Arkansas Bd. Of Elections*, 586 F. Supp. 3d 893 (E.D. Ark 2022)

federal or state official, a lobbying party officer, or employee of a PAC within the last 5 years.

The Arkansas Supreme Court blocked the measure from the ballot. Another effort was launched before the 2022 midterm elections but it did not qualify for that November's ballot.³⁹

VIII. CHANGES TO VOTING LAWS SINCE 2020

Donald Trump's false claims of widespread voter fraud in his 2020 loss to Joe Biden led Arkansas Republicans to produce a broad array of so-called "election integrity" bills in the state. The state had already required a photo ID to vote beginning in 2017, but that was altered in 2021 to prohibit submission of a sworn affidavit attesting to one's identity in lieu of a valid photo ID. Election officials can no longer send out unsolicited absentee ballots to voters and the deadline to submit an absentee ballot was moved to the Friday before election day, the earliest such deadline in the country. Bills to move voter registration online or to make registration automatic never made it out of committee. This constellation of changes to state laws make it more difficult to register to vote and cast a ballot, and scholars have convincingly demonstrated that this disproportionately harms Black voters.⁴⁰

³⁹ Andrew DeMillo, "Arkansas court blocks redistricting, open primary measures," *Associated Press News*, August 27, 2020, <https://apnews.com/general-news-26bc780b15f5d444e1ff4b037d84442f>; Daniel Breen, "Arkansas group proposes independent redistricting commission," *UALR Public Radio*, January 3, 2022, <https://www.ualrpublicradio.org/local-regional-news/2022-01-03/arkansas-group-proposes-independent-redistricting-commission>.

⁴⁰ Emily Walkenhorst, "Voter-ID amendment gains Arkansans' approval," *Arkansas Democrat-Gazette*, November 7, 2018, <https://www.arkansasonline.com/news/2018/nov/07/voter-id-amendment-gains-arkansans-app/>; Josie Lenora, "Four Arkansas laws regulating voting will stay in place," *UALR Public Radio*, May 16, 2024, <https://www.ualrpublicradio.org/local-regional-news/2024-05-16/four-arkansas-laws-regulating-voting-will-stay-in-place>; *Voter Integrity and Voter Registration Modernization Act of 2023*, H. B. 1537, 94th Ark. Gen. Assem. (2023); Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy*, (New

A nonpartisan report on the 2020 election showed that Arkansas had the lowest voter turnout in the country (54%). Most of the counties in the state with the lowest voter turnout have large Black populations. The same report found that the state had the highest rate of rejection of mail-in ballots. Arkansas also ranked 48th in ease of casting a ballot in a *New York Times* study.⁴¹

Despite Black citizens making up more than approximately 15% of the state's population today, Arkansas is the only former Confederate state that has never elected a Black person to Congress. And no Black person from Arkansas has ever been elected to the United States Senate or to the Arkansas statewide elected offices of Governor, Lieutenant Governor, Chief Justice or Associate Justice of the Supreme Court, Secretary of State, Treasurer, Auditor, or Land Commissioner.⁴²

Perhaps the closest the state came to having a Black member of Congress was in 2020 when State Senator Joyce Elliott (D-Little Rock), who is Black, challenged incumbent French Hill for the 2nd congressional district seat. Elliott was a well-known and popular member of the state senate and the 2nd congressional district included all of Pulaski County—the district was composed of approximately 21% Black voters. Hill employed racialized language in his

York: Bloomsbury, 2018); “The Impact of Voter Suppression on Communities of Color,” *Brennan Center for Justice*, January 10, 2022, <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>.

⁴¹ “Study: Arkansas Ranks Last in Voter Turnout,” *Arkansas Money & Politics*, January 8, 2024, <https://armoneyandpolitics.com/arkansas-last-voter-turnout/>; Kristin Higgins, “The 2022 Election: Where Did Arkansas Voters Turnout the Most?,” *University of Arkansas Division of Agriculture Research & Extension*, November 15, 2022, <https://www.uaex.uada.edu/business-communities/ced-blog/posts/2022/november/where-did-arkansas-voters-turnout-the-most-2022-election.aspx>; Matt DeRienzo, “Arkansas rejects absentee ballots at a high rate, but won’t inform voters,” *Center for Public Integrity*, October 30, 2020, <https://publicintegrity.org/politics/elections/us-polling-places/arkansas-rejects-absentee-ballots-high-rate-voters/>.

⁴² Summer Ballentine, “Analysis: 10 states still haven’t elected minority statewide,” *Associated Press News*, September 3, 2016, <https://apnews.com/analysis-10-states-still-havent-elected-minority-statewide-6d70082a5f854109aee7874e915c6631>.

campaign against Elliott. He said Elliot was “as dangerous as they come” and that, if she were elected, would “be a member of the Congressional Black Caucus.” The election was a tossup shortly before the election, but Hill prevailed with 55% of the vote.

Within Pulaski County, at the local level, Black voters had made inroads in electing Black officials before the 2020 Census and 2021 Redistricting. In 2018, the city of Little Rock elected Frank Scott, Jr., the city’s first elected Black mayor in the 200 years since its founding. Cite. In the 2018 elections, Pulaski County elected its first Black County Sheriff, Eric Higgins, and its first Black County Clerk, Terri Hollingsworth.⁴³

In its 2021 congressional redistricting, the Arkansas Assembly divided Pulaski County—which has the highest concentration of Black voters in the state—among three congressional districts.⁴⁴

IX. CONCLUSION

Arkansas has a long history of harnessing state power to harm Black voters. When federal legislation or court intervention required the state to provide Black voters their constitutional right to be free from racial discrimination in voting, the state has pushed back by creating various schemes to deny or limit Black political participation including poll taxes, the white primary, and

⁴³ Desmond Nugent, “Little Rock city leaders discuss importance and impact of diversity in the workplace,” *KATV.com News*, February 4, 2021, <https://m.katv.com/news/local/little-rock-city-leaders-discuss-importance-and-impact-of-diversity-in-the-workplace>

⁴⁴ Alison Wright, “Arkansas Population by Race & Ethnicity, 1980-2020,” *Arkansas Economic Development Institute*, May 27, 2022, <https://arstatedatacenter.youraedi.com/arkansas-population-by-race-ethnicity-1980-2020/>; “My Congressional District,” *United States Census Bureau*, <https://www.census.gov/mycd/?st=05&cd=02>, accessed September 13, 2024; Frank E. Lockwood, “Hill, Elliott in Tight Race for U.S. House Seat,” *Arkansas Democrat-Gazette*, October 18, 2020, <https://www.arkansasonline.com/news/2020/oct/18/hill-elliott-in-tight-race-for-us-house-seat/>.

violence and intimidation. Even after the passage of the VRA in 1965, Black leaders have had to continuously seek legal remedies to the diminishment of their voting rights, such as through illegal redistricting.

Date: September 16, 2024

Ryan A. Smith

Ryan A. Smith

APPENDIX I

RYAN ANTHONY SMITH

DEPARTMENT OF HISTORY

901 S. NATIONAL AVE

SPRINGFIELD, MO 65897

RYANSMITH@MISSOURISTATE.EDU

EDUCATION

University of Arkansas, Fayetteville, Arkansas **expected May 2025**
Ph.D. in History (in progress)
Dissertation: “Punishment for Profit: Labor and Activism in Arkansas’s Penitentiary System”
Major Field: United States History since 1877
Minor Fields: United States History to 1877, Modern Africa
Certificate: African and African American Studies

Arkansas State University, Jonesboro, Arkansas **August 2017**
M.A. in History
Thesis: “Gendered Confines: Women’s Prison Reform in 1920s & 1930s Arkansas”

University of Central Arkansas, Conway, Arkansas **May 2008**
B.A. in History – *magna cum laude*
Minor: Honors Interdisciplinary Studies

ACADEMIC APPOINTMENTS

Missouri State University, Springfield, Missouri **August 2023-Present**
Instructor of History and African American Studies

University of Arkansas, Fayetteville, Arkansas **August 2017-May 2023**
Graduate Teaching Assistant

PUBLICATIONS

Smith, Ryan Anthony. Review of *Let the People See: The Story of Emmett Till*, by Elliott Gorn. *Journal of Mississippi History* 81, no. 3 and no. 4 (Fall/Winter 2019): 256-257.

Smith, Ryan Anthony. *Encyclopedia of Arkansas*, “Mary Dewees.” Little Rock, Arkansas. *Encyclopedia of Arkansas*, <https://encyclopediaofarkansas.net/entries/mary-deweese-14195/>.

Smith, Ryan Anthony. “Laura Conner and the Limits of Prison Reform in 1920s Arkansas,” *Arkansas Historical Quarterly* 77, no. 1 (Spring 2018): 52-63.

PRESENTATIONS

“Of Material Benefit”: Prison Labor and State Infrastructure in Postwar Arkansas, 1945-1980

2021 Southern Historical Association Conference, New Orleans, LA Nov 3-6, 2021

Proxy Research Panel (Panel Discussion)

University of Arkansas Special Collections

Oct 6, 2021

Pea Pickers Picayune: Resistance and Reform at Arkansas's Cummins Prison Farm

AAST Graduate Conference, University of Arkansas

April 29, 2021

Teaching and Learning to Teach in the Era of COVID-19 (Panel Discussion)

100th Anniversary Phi Alpha Theta Conference, University of Arkansas

March 12, 2021

The Historiography of Policing and Mass Incarceration in Postwar America

AAST Graduate Research Colloquium, University of Arkansas

April 17, 2019

"The friendly Negro" and "the savage foe": Gender, Race, and Nationalism in Early Southern Captivity Narratives

American Society for Ethnohistory Conference, Nashville, TN

Nov 12, 2016

"The friendly Negro" and "the savage foe": Gender, Race, and Captivity in the Antebellum American South

Southern Feminisms Conference, Arkansas State University

Oct 15, 2016

Going North: Gender, Labor, and Family in Postwar Arkansas

Create @ State Symposium, Arkansas State University

April 6, 2016

WINNER: Outstanding Graduate Presentation, non-STEM Division

Queer Captives: Sexuality and Space on the Early American Frontier

Rural Freaks Conference, Arkansas State University

Feb 20, 2016

AWARDS

J. Hillman Yowell Award for Excellence in Teaching

April 2023

Given to the outstanding graduate student instructor in the Fulbright College of Arts and Sciences at the University of Arkansas

Course Development Grant (\$1,500)

Summer 2021

Pryor Center for Arkansas Visual and Oral History

Mary Hudgins Arkansas History Research Fund (\$2,600)

Summer 2021

University of Arkansas, Department of History

Jesse Taylor, Jr., Endowed Scholarship (\$2,600)

Summer 2020

University of Arkansas Department of History

Research Fellow

Summer 2019

Pryor Center for Arkansas Visual and Oral History

Diane D. Blair Fellowship in Southern History (\$2,000) Diane D. Blair Center Southern Politics and Society	April 2019
African and African American Studies Research Grant (\$2,000) University of Arkansas Department of African and African American Studies	August 2018
Walter Lee Brown Scottish Rite of Freemasonry Scholarship University of Arkansas Department of History	April 2018
Gordon H. McNeil Award for Outstanding Graduate Research Paper University of Arkansas Department of History	April 2018
Distinguished Doctoral Fellow, University of Arkansas	2017-2021
John O. Galloway Award, Arkansas State University For outstanding graduate student in history	August 2017
Violet B. Gingles Award from the Arkansas Historical Association For outstanding manuscript essay in Arkansas history	April 2017
Arkansas State History Department Travel Grant (\$1,400)	November 2016
Roger and Janna Lambert Memorial History Scholarship (\$1,100)	2016-2017
Outstanding Graduate Presentation, non-STEM Division Create @ State Conference	April 7, 2016

TEACHING EXPERIENCE

Missouri State University, Springfield Missouri

Instructor for:

AAS 100: Introduction to African American Studies

HST 121: Survey of the History of the United States to 1877

University of Arkansas, Fayetteville, Arkansas

Instructor for:

HIST 2003: History of the American People to 1877

HIST 2013: History of the American People, 1877-Present

HIST/AAST 3243: African American History Since 1877

Graduate Teaching Assistant for:

HIST 2003: History of the American People to 1877

HIST 2013: History of the American People, 1877-Present

HIST/AAST 3243: African American History since 1877

HIST 4853: Black Freedom in the Age of Emancipation

Arkansas State University, Jonesboro, Arkansas

Instructor for:

HIST 2763: The United States to 1876

HIST 2337: The United States since 1876

HIST 1023: World Civilizations since 1660

APPENDIX II:
Materials Considered

Articles & Books

“Ahead of Debate, Huckabee’s Claim of Black Support Questioned,” *Arkansas News*, September 26, 2007 (Archived, <https://web.archive.org/web/20150923194725/http://archives.arkansasnews.com/2007/09/26/ahead-of-debate-huckabees-claim-of-black-support-questioned/>).

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Bolton, S. Charles. *Fugitivism: Escaping Slavery in the Lower Mississippi Valley, 1820-1860* (Fayetteville: University of Arkansas Press, 2019).

Branum, Chris M. “Another Look at Disfranchisement in Arkansas, 1888-1894,” *Arkansas Historical Quarterly* 69 (Autumn 2010): 245-262.

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Christ, Mark K. ed., *A Confused and Confusing Affair: Arkansas and Reconstruction* (Little Rock: Butler Center Books, 2016).

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Duncan, Georgena. “Manumission in the Arkansas River Valley: Three Case Studies,” *Arkansas Historical Quarterly* 66 (Winter 2007): 422-443.

Foner, Eric. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: Norton, 2019).

Gordon, Fon Louise. *Caste and Class: The Black Experience in Arkansas, 1880-1920* (Athens: University of Georgia Press, 2007).

Graves, John William. “Negro Disfranchisement in Arkansas,” *Arkansas Historical Quarterly* 36 (Autumn 1967): 199-225.

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Hill, Karlos. *Beyond the Rope: The Impact of Lynching on Black Culture and Memory* (New York: Cambridge University Press, 2016).

Jones, Kelly Houston. *A Weary Land: Slavery on the Ground in Arkansas* (Athens: University of Georgia Press, 2021).

Kilpatrick, Judith. *There When We Needed Him: Wiley Austin Branton, Civil Rights Warrior* (Fayetteville: University of Arkansas Press, 2007).

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