WHO WE ARE: A CHRONICLE OF RACISM IN AMERICA

EPISODE 2: THE FAILURE OF THE “GREAT COMPROMISE”

CARVELL: This is Who We Are, a podcast by Ben and Jerry’s and produced by Vox Creative. I’m Carvell Wallace.

BETTY: I got lost!

MARQ: Just talk to me, just talk to me, just talk to me.

BETTY: Okay! When I was finally able to vote, it was one of the greatest moments in my life.

CARVELL: Betty Riddle will never forget the first time she was able to vote. She was 62 years old. Betty was one of the 1.5 million Floridians who won back the vote in 2018 when the state re-enfranchised people with former felony convictions. Up until that amendment change, one out of every five Black Americans in Florida was unable to vote.¹

Voting is about representation. It’s about a government that is, lest we forget (and it’s easy to forget), supposed to be acting in the interests of its citizens. The government is not in charge. They are not the force we’re supposed to be afraid of, or subject to. In fact, it is supposed to be the other way around. We are in charge. We tell the government what to do and not do. We make sure that the government is behaving in accordance with our wishes. And voting is how we do that. In fact, it is the only way we have to do that. A vote is how we make known what we want and don’t want, what we will and will not accept from our representatives. So what happens to a government, what happens to a country when a sizable portion of the population is not allowed to vote?

For Betty, voting for the first time was just an extension of everything she fought for and is still fighting for.

BETTY: I was able to tell—see my, tell my, grandkids how important it is to vote. And always, no matter what choices you made, you still have a right. You have a right for a second chance. Never, never give that up.

CARVELL: It’s a fight that Black Americans have been fighting for hundreds of years, since the inception of this country. Something that my parents and grandparents took seriously. And despite that, in the very first presidential election that I was old enough to vote in, I took the entire thing completely for granted.

I turned 18 right before the 1992 presidential election. And that was, that was the Clinton election. And I moved to New York to go to school. My birthday’s in October, the election was in November, I moved to New York in late September. And as a result, I didn’t quite just get it together to like, figure out my absentee voting stuff, or re-register in New York. I just didn’t do it. I just didn’t like, take care of it. And I remember Clinton winning and I remember feeling good about that. That was the first, you know, as a young person that was like, there was a real, like, MTV “Rock the Vote,” like trying to get youth involved. And I really like, felt like, okay, this is, we have an election. And at that point, Clinton was like, he played saxophone, he was on the Arsenio Hall Show. Like, we might have a cool dude in the office. But it was very general.

¹Nearly one-third of the disenfranchised are Black, although African Americans make up just 16% of the state’s general population. More than one in five African Americans in Florida is denied the right to vote because of a past criminal conviction. Source: https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf

Approximately 1.5 million people are currently barred from voting in the state because of a past felony conviction — a figure representing about 10 percent of Florida’s adult population. Source: https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4
It was a simpler time for me, a newly-minted 18-year-old who basically just thought of American presidential candidates as different shades of rich white guys. There was the rich white guy who would call you the n-word to your face, and then there was the one that would at least have the decency to wait until you were out of the room. My view, in retrospect, was very American: very young, very spoiled, and very Gen X. For me in 1992, the presidential election was only as important to me as what it meant to my life directly. And I didn’t think this or that guy made much of a difference to my daily life, so for me, completing my voter registration was a nice thing to do if I got around to it, but certainly nothing to get worked up over.

But for Jeffery Robinson, the deputy Legal Director of the ACLU, voting has always been about a lot more than personal interest. He sees what it took me an election or two to understand: that voting was crucial, critical, something important enough for Black people’s safety and empowerment that this country has spent literally its entire history coming up with schemes — from fees, to ID laws, to felony convictions, to outright violence — to keep us from it. And that gets him fired up.

JEFFERY: We are fired up, and well, frankly I am angry. Betty was so happy to vote in this primary, and yet the fight in Florida for formerly incarcerated people is still raging. Shortly after Amendment 4 re-enfranchised over a million voters, a law was passed that said, well, you can’t vote unless you’ve paid all your court fines and fees. And that’s still the case in 2020.

And those fines and fees are imposed in a way to make money off the backs of the poorest people in the country. And so this whole issue of, it used to be if you’re been convicted of a felony, you can’t vote. Well, go back in history and try and find out where the hell did that come from? Who said that? Cause the myth of America was: you commit a crime, you go to prison, and then you’ve served your time. You’ve paid your debt to society, and you come out on the other end and you go forward. Well, if you start looking at the states that originally started enacting laws to take away voting rights from people convicted of a crime, you will see that they had a racialized motive in almost every single one of them.

CARVELL: What’s happening to Betty in Florida is happening in other states where people with past felony convictions for which they have served time still have to fight tooth and nail for the ability to cast a single ballot. And you may think that it’s just about criminal justice, but really it’s just the latest tactic, a long and continuous history of making it as hard as possible for Black people to be able to vote.

You may have learned in your history class — assuming that you paid attention for that long — that the 15th Amendment prevented the United States from denying any citizen’s right to vote for

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2 https://ballotpedia.org/Florida_Amendment_4_Voting_Rights_Restoration_for_Felons_Initiative_(2018)

“That law requires felons to pay all court-related fines, fees and restitution before registering to vote — and to swear, under penalty of perjury, that the debts are paid. But a vast number of felons are too poor to pay their fines, according to evidence presented in a lawsuit challenging the restrictions. And even if they can afford to do so, a patchy system of court records does not always allow them to know what they owe or whether they’ve paid.” Source: https://www.washingtonpost.com/politics/in-florida-felons-must-pay-court-debts-before-they-can-vote-but-with-no-system-to-do-so-many-have-found-it-impossible/2020/05/13/08ed05be-906f-11ea-9e23-6914ee410a5f_story.html

3 Felony disenfranchisement has an undeniable racial present, not just past. Black Americans constitute 2.2 million of the disenfranchised, banned from voting at four times the rate of all other racial groups combined. Source: https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box

4 "It wasn’t until the end of the Civil War and the expansion of suffrage to Black men that felony disenfranchisement became a significant barrier to U.S. ballot boxes. At that point, two interconnected trends combined to make disenfranchisement a major obstacle for newly enfranchised Black voters. First, lawmakers — especially in the South — implemented a slew of criminal laws designed to target Black citizens. And nearly simultaneously, many states enacted broad disenfranchisement laws that revoked voting rights from anyone convicted of any felony. These two trends laid the foundation for the form of mass disenfranchisement seen in this country today.” Source: https://www.brennancenter.org/sites/default/files/publications/Disenfranchisement_History.pdf
reasons having to do with race, color, or previous servitude. Furthermore, it gave Congress the power to act in order to enforce this. If only it were that simple.

JEFFERY: The 15th Amendment to the constitution made it possible for Black men to vote. And that was clearly significant. So, in 1896, there were over 125,000 Black men registered to vote in the state of Louisiana. And in 1900, that number had dropped to just over 5,000. And by 1904, that number had dropped again to just over 1,000. And by the 1920s, only a fraction of the potential registered Black voters in states like Georgia and Virginia voted, and many weren’t registered at all. Now why do you suppose it was that over 120,000 people decided not to vote? Three initials: K, K and K. And so violence and terror has been used to subvert the law, the 15th amendment, the voting rights act, which was another act, another critical piece of legislation. But there have always been Americans attempting to get around those laws.

CARVELL: To understand how we got here, why Betty and millions of others haven’t been able to vote, we have to go back in time.

DR. WILLIAMS: So, for me, a lot of this is about historical recovery. And the reason I described myself as an education activist is, I’m all about making sure that people understand that history. Because if you don’t have those foundations, it’s hard to understand what Al Sharpton means when he says "You’ve always had your knee on our neck."  

CARVELL: That’s Dr. Yohuru Williams. He’s a Professor of History and Dean at St. Thomas University in Minnesota. For him, the history of Black voting, which is to say Black representation, doesn’t just begin with suffrage. It goes all the way back to the creation of the Electoral College. A governmental body which, he says, has its roots in racism.

DR. WILLIAMS: It was rooted in a compromise over the issue of slavery and the balance of power between the slave holding states, those states that were enslaving Africans, and those states, which didn’t practice slavery, but in many ways were dependent on the institution of slavery for their economic survival. And so the Electoral College in and of itself is a means to ensure that those states that have a majority population, um, of slaves or enslaved peoples, will still be able to exercise political power, even though they don’t have the free number or the same number of free white owning males. So, it’s a compromise that ultimately at the end of the day is at its core about maintaining white supremacy.

CARVELL: So what you’re basically saying is that because these slave States — South Carolina or whatever, for example — had this huge population of enslaved people, they wanted that

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5 Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.  
Section 2: The Congress shall have power to enforce this article by appropriate legislation  
Source: https://constitutioncenter.org/interactive-constitution/amendment/amendment-xv

6 "In Louisiana, where more than 130,000 Black voters had been registered in 1896, the number had plummeted to 1,342 by 1904." Source: https://americanhistory.si.edu/brown/history/?-segregated/white-only-1.html
The 1898 Louisiana Constitution eliminated federally-enforced voting rules that had enfranchised Black men in Louisiana during Reconstruction. As a result, the number of Black registered voters dropped from 130,000 before the new constitution, to just 5,000 by 1900. By 1904, the number had dropped to just 1,000. Source: https://calendar.eji.org/racial-injustice/may/12

7 "In Louisiana in 1896 there were 164,088 whites registered, and 130,344 Negroes. In 1900, the first registration year after a new constitution had been adopted, there were 125,437 whites and 5,320 Negroes registered. By 1904 Negro registration had declined to 1,718, and white registration was 106,360. This represented a 96% decrease in Negro registration, and a four percent decrease in white." Source: https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2861&context=ndlr

8 Ibid.

9 "George Floyd’s story has been the story of Black folks,” the Rev. Al Sharpton said in a eulogy of Mr. Floyd, who died after a white police officer held him down on a Minneapolis street with a knee to Mr. Floyd’s neck for nearly nine minutes... “But you had your knee on our neck. We could run corporations and not hustle in the streets, but you had your knee on our neck. We had creative skills, we could do whatever anybody else could do. But we couldn’t get your knee off our neck.” Source: https://www.nytimes.com/2020/06/04/us/floyd-memorial-funeral.html
And all of a sudden they needed that population to be represented. Like, yo, we have like 4 million people here, so we should get a big say, but then, the other hand, they were also like, but we don’t count those 4 million people as people, so they can’t vote. And so tell us a little bit about how the Electoral College came kind of as a solution to that quandary that these Southern slave-owning states found themselves in.

**DR. WILLIAMS:** You know, it’s a great question. They found themselves in that quandary because of the paradox of American slavery and American freedom. They have this large population of unfree peoples who they need to count. And so they come up with this compromise that all others shall count as three-fifths. A lot of people interpret that to mean that they were saying that Blacks counted as three-fifths of a person. That’s not necessarily true. They’re saying in a general sense, this population will count as three-fifths to augment our representation. Ironically, that’s the same type of virtual representation that the Colonists were upset about with England. And so the very conflict, the very issue which defined so much of the Revolutionary War for the Colonists, is the same thing they then impose on their enslaved Africans. So what’s interesting is, then you get this political compromise whose intent is to shore up the feeling of the Southern states that they will have a equal say in government, but ultimately what it ends up doing is creating what we like to call a “Virginia dynasty” because three of the first four presidents of the United States come from Virginia. And so much of what’s navigated in that early period of American history is navigated around dealing with that paradox of American slavery and American freedom.

**CARVELL:** Well, what’s interesting about that is that ideally the Southern slave-owning states wanted this compromise, they wanted this sort of way of counting their enslaved population without actually giving that population citizen rights. They wanted that as a way to make sure they weren’t underrepresented in the national representational discourse, but what results is that they’re over-represented, right? Which is the thing that we—that is in fact the issue with the Electoral College now, right? It’s like you’re in an underpopulated state and you’re like, “Well, we shouldn’t have this city overrepresent,” but what happens is then this state gets a huge, sort of a huge say in how things go, despite the fact that there’s, like, eight people there.

**DR. WILLIAMS:** Right? It’s not a check on democracy. It’s actually a frustration on democracy. And it’s why many people will argue that we don’t live in a Democracy. We live in a Democratic Republic. Uh, it doesn’t excuse, however, what many people consider to be an antiquated system that was clearly designed for white supremacist purposes. And if we look at the history of the Electoral College over the course or sweep of US history, we can see ways in which it was deployed to really achieve the same.

**CARVELL:** One of the most extreme examples of the Electoral College advancing racism is a little-known event called the Compromise of 1877, something I never learned about until a friend who just happened to be a US history teacher randomly explained it to me at a barbecue. And believe it or not, it changed the entire trajectory of America.

**DR. WILLIAMS:** You have, uh, two candidates for president: Samuel Tilden from New York and Rutherford B. Hayes from Ohio. Hayes is a Republican candidate. Tilden however, has done very well in the polls. And it winds up being a contested election where it’s going to be a kickback to the

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10 Four states had more than 100,000 slaves in 1790: Virginia (292,627); South Carolina (107,094); Maryland (103,036); and North Carolina (100,572). Source: [https://www.nationalgeographic.org/media/us-census-1790/](https://www.nationalgeographic.org/media/us-census-1790/)

11 “Four of the first five United States presidents were Founding Fathers from Virginia. Of the first 36 years of the United States’ existence, Virginian men served as president for 32 of them. This period became known as the Virginia Dynasty. In the last few months, I have visited all of their homes and wanted to highlight these presidents in a series of blog posts.” Source: [https://blogs.loc.gov/law/2016/01/virginia-dynasty-james-madison/](https://blogs.loc.gov/law/2016/01/virginia-dynasty-james-madison/)

12 “The Founders preferred the term “republic” to “democracy” because it described a system they generally preferred: the interests of the people were represented by more knowledgeable or wealthier citizens who were responsible to those that elected them. Today we tend to use the terms “republic” and “democracy” interchangeably. A widespread criticism of representative democracy is that the representatives become the ‘elites’ that seldom consult ordinary citizens, so even though they are elected, a truly representative government doesn’t really exist.” Source: [https://www.ushistory.org/gov/1c.asp](https://www.ushistory.org/gov/1c.asp)
Electoral College and thrown into the Senate because there's a challenge in the Electoral College about where to count votes from. You have states where votes are in dispute.

**CARVELL:** Because of the Electoral College, there is a lack of clarity about who won. Four states are in contention: Oregon, South Carolina, Florida, and Louisiana. Ultimately, it is agreed that the Republicans will take the presidency if they give the Democrats something in return.

**DR. WILLIAMS:** Ultimately, the Republican party decides that in order to win the election, they'll sacrifice, uh, Black political rights or civil rights on the altar presidential politics. So, they say to the Democrats, if you agree to seat and count the votes of the Republican electors, we'll agree to this compromise, which includes three basic things: Number one, the appointment of one Southerner to the cabinet or a Southerner to the cabinet, which is, you know, something that they wanted desperately, number two, basically a public works bill for the South to rebuild the infrastructure of the South.

**CARVELL:** After the civil war.

**DR. WILLIAMS:** Exactly. And in the third was, um, the end of Reconstruction in the South. So basically, we will withdraw the troops. Now that's huge because at that point, um, even by 1877, there's still a great deal of violence that's ravaging the South, um, directed toward African Americans. So that withdrawal of troops makes Blacks even more vulnerable and virtually assures the end of reconstruction, because once those troops are gone, many of the—much of the political chicanery that was kept at bay by virtue of the presence of the Freedmen's Bureau and the Union Army is now allowed to spread. Much of the violence, which was kept at bay by the presence of federal troops — all those things are gone. All those protections are gone. And so suddenly you have the ascendancy of the South again.

**CARVELL:** Yeah, you heard that right. If you've ever wondered why the Reconstruction period after the Civil War, which brought us so many gains that we still benefit from, like public education, ended so abruptly after just 12 years. And it's important to remember that this compromise never would have happened at all, if it weren't for the Electoral College, which itself only came into existence because of slavery.

In school, we are taught to believe that the 15th Amendment in 1870, seven years before the Tilden Hayes compromise, grants formerly enslaved Black men the vote. But that's not really the case.

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13 “After Election Day, four states, Florida, Oregon, Louisiana and South Carolina, sent two rival slates of electors to Congress to be counted, since there were rival Democratic and Republican factions in those states.” Source: https://constitutioncenter.org/blog/the-wildest-election-ever-wasn’t-in-2016

14 “The deal led to the widespread imposition of racial segregation in the old Confederacy, along with the disfranchisement of Black voters. “The Party of Lincoln” no longer played a significant role in Southern politics.” Source: https://www.politico.com/story/2008/02/presidential-election-deadlocks-congress-feb-1-1877-008243

15 “By the election of 1876, the federal government had withdrawn from all but three Southern states, leaving Blacks at the mercy of state and local governments. The Compromise of 1877, in which election-winning electoral votes were exchanged for the end of federal intervention in the Southern states of Louisiana, South Carolina and Florida, marked an era of complicity between Northern and Southern politicians in the abandonment of the issue of civil rights for Blacks. Southern Democrats accepted Republican Rutherford B. Hayes' election in exchange for the promise of more federal aid for rebuilding the Southern infrastructure and less federal intervention in Southern politics. As a result, many of the civil rights Blacks enjoyed during the Reconstruction era (1865-1877) were revoked.” Source: https://www.thirteen.org/wnet/lmcrrow/struggle_president.html

16 “The EJI, which relied on the Tuskegee numbers in building its own count, integrated other sources, such as newspaper archives and other historical records, to arrive at a total of 4,084 racial terror lynchings in 12 Southern states between the end of Reconstruction in 1877 and 1950, and another 300 in other states.” Source: https://www.theguardian.com/us-news/2018/apr/26/lynchings-memorial-us-south-montgomery-alabama

17 Passed by Congress February 26, 1869. Ratified February 3, 1870. Source: https://constitutioncenter.org/interactive-constitution/amendment/amendment-xv
It’s this moment, this little known compromise in 1877, that sets in motion years, generations in fact, of widespread Black male voter disenfranchisement in the South and beyond.

**DR. WILLIAMS:** Well, there are three problems, interrelated problems, when it comes to African Americans exercising the right to vote in the South in the period after the Civil War. Um, one is the fact that there’s still incredible danger of violent retaliation for exercising that right to vote. One of the things that we celebrate in some sense, when we talk about the importance of Hayes-Tilden and the presence of federal troops, is that by day, at least the Armies are there to protect African Americans in the exercise of their civil rights. But at night you know, the research of people like the Freedmen and Southern Society Project and the archives, National Archives in Washington, DC, have reports of Freedmen’s Bureau agents taking these accounts from sharecroppers in the South who were beaten, intimidated, in some cases have their property burned because they voted the wrong party, they voted the wrong ticket. So, violence early on becomes a part of, you know, how African Americans have to navigate the voting process and navigate the exercise of the elective franchise, in that sense.

Second again, is the hostile United States Supreme Court. So, it’s also important to note that the Supreme Court is going to decide, and it’s true, that the 15th amendment actually doesn’t confer the right to vote on anyone. The 15th amendment simply outlaws discrimination in voting based on race, color, or previous condition of servitude. Once the court has decided that they, in essence, um, empower the Southern states to continue to do what they had done in the immediate aftermath of the war, and that was to look for loopholes.

There are any number of things that you can introduce that don’t fall into that, those magic words, that then would be viable restrictions on voting: the Grandfather Clause, which was an insidious, um, device used to prevent Blacks from voting; the poll tax, the literacy tax. There’s a reason all those were legal, the white primary, um, legal ways that you could deny African Americans the right to vote. So even though you see unprecedented numbers of African Americans elected to office and we’re not just talking about, you know, Congressmen and Senators like Blanche Bruce, or Robert Smalls. But we’re talking about all offices in the South, you know, local, um, very

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18 Source: [http://mappingoccupation.org/](http://mappingoccupation.org/)

19 “As the Army lost its presence and its powers, freedpeople in the South were subject to campaigns of lynching and intimidation, and in the 1890s to the widespread disfranchisement and segregation system that became known as Jim Crow.” Source: [http://mappingoccupation.org/](http://mappingoccupation.org/)

20 Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2: The Congress shall have the power to enforce this article by appropriate legislation. Source: [https://constitutioncenter.org/interactive-constitution/amendment/amendment-xv](https://constitutioncenter.org/interactive-constitution/amendment/amendment-xv)

21 A half-dozen states passed laws that made men eligible to vote if they had been able to vote before African Americans were given the franchise (generally, 1867), or if they were the lineal descendants of voters back then. Most such laws were enacted in the early 1890s. Source: [https://www.npr.org/sections/codeswitch/2013/10/21/239081586/the-racial-history-of-the-grandfather-clause](https://www.npr.org/sections/codeswitch/2013/10/21/239081586/the-racial-history-of-the-grandfather-clause)

After the right to vote was extended to all races by the enactment of the 15th Amendment, many Southern states enacted poll tax laws. These laws achieved the desired effect of disenfranchising African American and Native American voters, as well as poor whites who immigrated after the year specified. Source: [https://ballotpedia.org/Poll_tax](https://ballotpedia.org/Poll_tax)

The literacy test—supposedly applicable to both white and Black prospective voters who couldn’t prove a certain level of education but in actuality disproportionately administered to Black voters—was a classic example of one of these barriers. Source: [https://slate.com/human-interest/2013/06/voting-rights-and-the-supreme-court-the-impossible-literacy-test-louisiana-used-to-give-Black-voters.html](https://slate.com/human-interest/2013/06/voting-rights-and-the-supreme-court-the-impossible-literacy-test-louisiana-used-to-give-Black-voters.html)

22 The Supreme Court had ruled in 1921, in Newberry v. United States, 256 U.S. 232, 41 S. Ct. 469, 65 L. Ed. 913, that political parties were private organizations and not part of the government election apparatus. Therefore, by means of the white primary device, African Americans were disenfranchised without official STATE ACTION that would have triggered JUDICIAL REVIEW. Source: [https://law.jrank.org/pages/11301/White-Primary.html](https://law.jrank.org/pages/11301/White-Primary.html)

23 “A total of 265 African American delegates were elected, more than 100 of whom had been born into slavery. Almost half of the elected Black delegates served in South Carolina and Louisiana, where Blacks had the longest history of political organization; in most other states, African Americans were underrepresented compared to their population. In all, 16 African Americans served in the U.S. Congress during Reconstruction; more than 600 more were elected to the state legislatures, and hundreds more held local offices across the South.” Source: [https://www.history.com/topics/american-civil-war/Black-leaders-during-reconstruction](https://www.history.com/topics/american-civil-war/Black-leaders-during-reconstruction)
important stuff. At the end of the day, the reality is they're unable to make a big impact on national politics by virtue of the fact that the Electoral College is still the gate.

**CARVELL:** Right. Right. And yet, despite all this, you have, I mean, which is like, really insidious, as you say—systemic disenfranchisement. You have Black Americans resisting and claiming our right to the ballot. We see some early efforts, the creation of the NAACP at the turn of the century. What role do these efforts play in ensuring voting? How do Black people resist this, despite this kind of like, collective effort on all levels to keep us from having an impact on the political process?

**DR. WILLIAMS:** Yeah. African Americans immediately recognize the importance to, as Frederick Douglass argued, organize for equality, and they do that in many ways. So first and foremost, we see despite this violence, um, and despite this chicanery, African Americans finding ways to exercise their right to vote and doing so in ways that, um, I think ultimately affirm their agency in this moment of contestation. You see African Americans arming themselves for self defense. You see African Americans forming collectives, where they're able to look out for their interests. You see Black political leaders pushing heavily for legislation to protect African Americans and their exercise of the elective franchise. You see Black, um, spiritual communities, you know, rallying around these ideas, and you see a strong push for education in the South. In fact, as we know, our public education system grows out of the aftermath of the Civil War and Reconstruction. And it's largely this demand on the part of freedmen for educators, so they will be quote-unquote “fit” for the duties of citizenship, and that is tied to voting and exercising an informed vote. So, these are all very powerful ways in which, um, African Americans, at least in the immediate aftermath of the war, resist.

By the time we get to the turn of the century, that's ramped up a notch. So at this point you have organizations like the Niagara Movement in 1905 articulating a slate of directives, which place justice in the courts and the right to exercise the right to vote unencumbered by violence at the top and forefront of their agenda. When the NAACP is formed, this is going to be a cornerstone. And one of their first successful cases by the NAACP's legal counsel will be in Guinn vs. Oklahoma, which will eradicate the Grandfather Clause. Of course, getting rid of the Grandfather Clause was in Oklahoma wasn't enough because Oklahoma simply replaced their Grandfather Clause with the literacy tests. And it just proves the myriad ways in which, um, segregation and inequality was this many-headed hydra. You could cut off one head, but then another would rear itself to take its place. And so the NAACP will commit itself to rooting out that type of political inequality, wherever it manifests itself, over the course of its existence. And we see the fruition of many of those cases in the early 1960s, but we also know that you still have a demand by 1965 for a Voting Rights Act of 1965, because many people recognize without major federal legislation and without an

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24 “Before the 1860s most of the South had only a rudimentary public school system. After the Civil War, Southern states ultimately created a dual educational system based on race.” Source: https://americanhistory.si.edu/brown/history/2-battleground/quest-for-education-1.html

25 Source: https://www.zinnedproject.org/news/tdih/-the-niagara-movement/

26 “Guinn v. United States was a United States Supreme Court case decided in 1915, dealing with the constitutionality of voter qualification provisions in state constitutions. Specifically, the court found residency-based “grandfather clause” exemptions to voter literacy tests—but not the tests themselves—to be unconstitutional ... The unanimous decision in Guinn v. United States marked the first time the Supreme Court struck down a state law disenfranchising African Americans.” Source: https://www.thoughtco.com/guinn-v-united-states-4588940

27 “Oklahoma Speaker of the House A. McCrory immediately called for a special legislative session to correct the “evil” of illiterate Blacks voting in the state. Other officials concurred. “It doesn’t make much difference, there will be no illegal negro votes cast in Oklahoma,” state election board chairman A.L. Wilker said. “We will enact a law taking its place ...” Lawmakers did just that in 1916, enacting another grandfather clause, leaving Black voters exactly where they were before. The new law disenfranchised Blacks because it provided only 12 days – April 30 to May 11, 1916, as the registration period for those who had been excluded from voting in 1914. If they failed to register, they permanently lost the right to vote.” Source: https://tulsaworld.com/news/local/history/throwback-tulsa-Black-oklahomans-denied-voting-rights-for-decades/article_cb1aeec2-9637-5636-becf-e00386bd58e9.html
enforcement mechanism, there's no way that Blacks are going to be able to exercise their right to vote unencumbered by that type of violence.\(^{28}\)

**CARVELL:** Since the Emancipation Proclamation was signed in 1863, Black Americans have fought for equal access to the ballot box.\(^{29}\) And it's because people rose up and died for this right that we saw the passage of the 1965 Voting Rights Act, which was just meant to actually enforce the 15th Amendment.\(^{30}\) And I wish that had been enough. The 15th Amendment guarantees people can vote, the Voting Rights Act guarantees that the 15th Amendment actually happens. But still, the fight continues. In 2013, the Supreme Court struck down key parts of the Voting Rights Act by a 5-4 margin giving nine states, mostly in the south, the ability to change their election laws without seeking federal approval.\(^{31}\) Shortly after the Supreme Court decision was finalized, the state of Texas announced that it would reinstate a voter ID law that had been previously struck down and that redistricting maps in the state would no longer require federal approval.\(^{32}\)

White supremacy is a multi-headed hydra that works to suppress the Black vote through a complex network of laws, statutes, and rulings that don’t just have to do with voting, but have to do with criminal justice as a whole. A system that Michelle Alexander calls “The New Jim Crow.”\(^{33}\) What, then, is the connection between mass-incarceration and voting rights?

**DR. WILLIAMS:** Again, a great question. Um, in Michelle Alexander’s work and in the documentary by Ava DuVernay, *13th*, people focus on the 13th Amendment and they talk about the fatal defect in the amendment, which is, um, slavery shall not exist in the United States except as punishment for a crime. But in some sense that doesn't completely tell you the whole story, because in reality, the challenge in understanding the way that criminality informs voting practices is that — this at their core are questions of citizenship. If we go from the Dred Scott decision where the Supreme Court says, you know, in the form of Justice Taney, the Negro never was nor never was intended to be a citizen of the United States. The 13th, 14th, and 15th Amendments, specifically the 14th Amendment, answer that and say, no, all persons born and naturalized in the United States are citizens of the United States and the state in which they reside.\(^{34}\)

So the 14th Amendment to me is the most important. It confers citizenship on the freedman. Once it does that, Southern actors who are looking to discriminate, looking to deny African Americans the right to vote, looking to, um, relegate Blacks to second-class citizenship then have to be creative in the way that they go about doing that. And one of the ways that they're doing that is


\(^{29}\) Issued by Abraham Lincoln on January 1, 1863, the Emancipation Proclamation declared “all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free.” Source: [https://guides.loc.gov/emancipation-proclamation](https://guides.loc.gov/emancipation-proclamation)

\(^{30}\) “The Voting Rights Act of 1965 offered African Americans a way to get around the barriers at the state and local levels that had prevented them from exercising their 15th Amendment right to vote. After it was signed into law by LBJ, Congress amended it five more times to expand its scope and offer more protections. Source: [https://guides.ll.georgetown.edu/c.php?a=5929198&p=4172704](https://guides.ll.georgetown.edu/c.php?a=5929198&p=4172704)

\(^{31}\) Chief Justice John G. Roberts, Jr. delivered the opinion of the 5-4 majority. The Court held that Section 4 of the Voting Rights Act imposes current burdens that are no longer responsive to the current conditions in the voting districts in question. Source: [https://www.oyez.org/cases/2012/12-96](https://www.oyez.org/cases/2012/12-96)

\(^{32}\) “ ... on the very day of the Supreme Court ruling, Texas Attorney General Greg Abbott said the state would ‘immediately’ enact both measures. The photo ID law requires voters to present an approved form of photo identification, where before they could present mail, utility bills or other proof of voter registration. The Justice Department has filed a lawsuit against the newly enacted photo ID requirements and joined an ongoing lawsuit against the disputed redistricting maps. Source: [https://www.propublica.org/article/voting-rights-by-state-map](https://www.propublica.org/article/voting-rights-by-state-map)

\(^{33}\) Source: [https://new jimcrow.com/](https://new jimcrow.com/)

\(^{34}\) Section 1: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside...” Source: [https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv](https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv)
exploiting the loophole, not only in the 13th Amendment, but also by their desire to have access to cheap Black labor, looking for ways to use the law in order to provide that supply. And so what you see are the development of things like convict leasing peonage, where you’re imprisoning people, not for a crime, but for failing to pay off a debt. That becomes one of the principles that’s used to support this type of a political disenfranchisement of felons. And in most of those states, you’re talking about large numbers of people of color, men of color in particular.

CARVELL: And yet the counter argument I often hear is, well, then don’t commit a crime. I mean, if you commit a crime, I mean, I know we have this thing in our American psyche that sort of really wants to separate people who are quote-unquote “criminals” from the “rest of us,” quote-unquote, without ever taking into account that the vast majority of white people commit crimes all the time and are never… right? But I, what is the counter argument to that? And people were like, well, just don’t commit a crime. And then you won’t lose your right to vote. Talk a little bit about how it is that so many Black people ended up then, and now in the criminal justice system.

DR. WILLIAMS: It’s a great question because it’s what we’re talking about that gets classified as crimes. And there are any number of books that deal with this, you know, masterfully. Rayford Logan’s phenomenal Betrayal of the Negro. We could talk about Douglas Blackmon’s Slavery by Another Name. Or David Oshinsky Worse Than Slavery. But we’re not talking about major felonies here. What we’re talking about are petty crimes. So in some instances, the crime, for example, for stealing a chicken could get you 10 years in the penitentiary. And now those 10 years in the penitentiary are at hard labor, well, that makes somebody at that point, um, not only, not eligible to vote, but it robs him and strips some of their freedom. And again, we’re not talking about, you know, murder or, you know, grand theft or major larceny. We’re talking about minor crimes. And these are often crimes that are informed by the denial of economic justice to African Americans.

So one of the reasons that, you know, you’ll find these petty thefts occurring is that the African Americans who are working on these plantations are denied wages or just wages. So, or they find themselves in peonage, or they’re set up so that once they are forced into a situation where they need to do something which is not illegal in the sense that they’re trying to feed their family, but illegal in the sense of the eyes of the law, then puts them in this crushing system of criminal justice, which basically eats them up and destroys them. What’s powerful for me, Carvell, is that we can talk about that in this historic context, and we can look at any number of examples of that at the turn of the century that continue into the 20th century. So convict leasing, and chain gangs, and so on and so forth. But by the time we get to the 1970s, my man Stevie Wonder, I think, captures this

35 “After the Civil War, slavery persisted in the form of convict leasing, a system in which Southern states leased prisoners to private railways, mines, and large plantations. While states profited, prisoners earned no pay and faced inhumane, dangerous, and often deadly work conditions. Thousands of Black people were forced into what authors have termed “slavery by another name” until the 1930s.” Source: https://eji.org/news/history-racial-injustice-convict-leasing/

36 “Peonage, also called debt slavery or debt servitude, is a system where an employer compels a worker to pay off a debt with work. Legally, peonage was outlawed by Congress in 1867. However, after Reconstruction, many Southern Black men were swept into peonage though different methods, and the system was not completely eradicated until the 1940s.” Source: https://www.pbs.org/tpt/slavery-by-another-name/themes/peonage/

37 Source: https://www.dacapopress.com/titles/rayford-w-logan/the-betrayal-of-the-negro/9780306807589/

38 Source: https://www.pulitzer.org/winners/douglas-blackmon

39 It reads like he’s just giving an example—can’t corroborate the 10 years for stealing a chicken…people have been executed for stealing chickens in the past. Source: https://nyti.ms/362ry1B

Among the complaints he reported was that African Americans were disfranchised [sic] for the conviction of petty crimes, including chicken theft: “Up North they do not send people to the penitentiary for petit larceny, but they do down there. I believe myself, as a Republican, that the law was made for the purpose of disfranchising [sic] colored men. If a colored man steals a chicken he is pretty liable to be sent to the penitentiary… [if] they are sent to the penitentiary, unless they are pardoned out, it takes away their right to vote.” Source: https://eji.org/news/history-racial-injustice-convict-leasing/

40 “In the early 1900s, dramatic stories of the abuse and wretched conditions of convict laborers began to be publicized through trials and newspaper accounts. The egregiousness of the violence and corruption of the system began to turn
brilliantly in his song, “Living for the City” where, you know, he gets to the, the second to the third to the last verse and you know, his brother’s smart, but you know, to find a job is like a haystack needle, cause where he lives, they don’t use colored people—living just enough for the city. And then we get to the breakdown. He goes to New York, just like I pictured it. Somebody asks him to hold something, you hear the judge say 10 years and hits the gavel—get in that cell n-word. And then we’re looking at Stevie Wonder chronicling for us in a song, Jim Crow justice in all of its pathological, insidious glory. And then, you know, Michelle Alexander talks about a new Jim Crow. I like to say it’s the old Jim Crow in some new clothes.

CARVELL: Today in 11 states formerly incarcerated citizens do not automatically get their voting rights restored after serving their time. In some cases, they have to take additional steps. In other cases, their rights can never be restored. At all. Which brings us back to Betty Riddle. She was in and out of prison for a few years in Florida, where up until 2018 former felons could not vote.

And here’s the thing: after the hard-won victory, the state of Florida came back with a new law that barred former felons from voting if they have any outstanding court fines or fees.

And to make things more confusing, Florida doesn’t have a central database. So some people don’t even know they owe anything until election day. Marq Mitchell is the director of Chainless Change, a community group that works with former felons. And he was helping people when he realized that he himself wasn’t eligible to vote.

MARQ: I was actually reaching out because we help people who have fines and fees. And so in that process, right, I realized, ‘Oh shoot, I owe fines and fees from when I was like 16-years-old.’ Like, 16! And so I was like super stoked thinking, ‘I’m going to be out here helping other people vote, right?’ I’m getting their right to vote back and then realized in the process that I needed that same support that I was out trying to figure out how to provide for other people.

CARVELL: So, Is this a new Jim Crow, or just an old Jim Crow with new clothes? Because to some, this added new step is nothing short of a poll tax. Marq and Betty actually know each other. They were both plaintiffs in the ACLU case against the state of Florida issuing these new fees. It went all the way to the Supreme Court, where the new courts and fees law was upheld. Still, Marq and Betty keep fighting. They recently met up over a video conference to share their experiences and check in.

BETTY: You know, I was adjudicated as an adult at 17. So...

MARQ: Yeah, that happened to me at 16.

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public opinion against convict leasing. Though many citizens and politicians wanted to abolish convict leasing, the problem of the expense and difficulty of housing convicts remained. Chain gangs developed as a popular solution to that problem. Source: https://www.pbs.org/tpt/slavery-by-another-name/themes/chain-gangs/

41 “In 11 states felons lose their voting rights indefinitely for some crimes, or require a governor’s pardon in order for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation) or require additional action before voting rights can be restored.” Source: https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx

42 In an interview, Andrew Warren, the state attorney in Hillsborough County, said systems for finding out how much a felon owes vary by county. There is no statewide database, meaning each case can take hours and even days to research, especially if the person has multiple convictions in different counties. Source: https://www.washingtonpost.com/politics/in-florida-felons-must-pay-court-debts-before-they-can-vote-but-with-no-system-to-do-so-many-have-found-it-impossible/2020/05/13/08ed05be-906f-11ea-8e23-69f4ee410a5f_story.html

43 “Florida is an example of a state that has created an environment of confusion and fear when it comes to voter registration. While Florida historically expanded voting rights in 2018 with the passage of Amendment 4 - a constitutional amendment clearing the way for 1.4 million returning citizens to register to vote - it hasn’t been an easy path for these would-be voters. Not only must they pay fines, fees and restitution to vote, the registration process is confusing and complicated. Given the fact that Florida has no central agency or database in which people can confirm the status of their financial obligations, fear around registering to vote is well warranted. Current state law re-criminalizes Floridians who mistakenly register if they have outstanding financial obligations. Registering to vote could cost a resident a $5,000 fine and/or up-to five years in prison.” Source: https://thehill.com/blogs/congress-blog/politics/462718-congress-can-mark-national-voter-registration-day-by-protecting
BETTY: Yeah, yeah. I was 17. I had a felony and I was adjudicated as an adult. And then I got caught up in a vicious cycle of addiction for 22 years. So I was in and out of prison, rehabs, you know, you name it. You know what I'm saying? So I never, ever, ever thought about voting. I heard my dad talk about it from time to time. And when I got out, my last bid, I was hit with a habitual. So I did, I had a 10 year sentence. And when you’re released from prison, they have what you call a prerelease program, where they tell you, as a convicted felon, what you can and cannot do. And I couldn't vote. That was a life sentence. And you know, it was like leaving one sentence and going into a life sentence once you released.

MARQ: How did it feel like, knowing that you were coming back home, when you were actually supposed to be free—coming back home was an opportunity to have a second chance—but there were a bunch of barriers in front of you that limited your access to a lot of different things?

BETTY: I tried to get a job at McDonald's and they denied me. I tried to get housing, they denied me. I tried to go to college, they denied me, being that I was straight — I wasn't out of prison a year. And I was just, my life was like, I want this, I want this, I set goals. I wanted to achieve this. I wanted to fight. I have heard people say, “once a convicted felon, always a convicted felon.” They will use our past to predict our future.

MARQ: But that's not how life works, right? Like how do you--

BETTY: But this is what we’re fighting for.

MARQ: Yeah, this is what we're fighting for, right? And I think voting is just a fraction of what really needs to be addressed.

BETTY: Oh, of course!

MARQ: But how can we really address that if we don't have an opportunity to vote. That's where all of the power lies, right? We have the ability to get some of these corrupt folk up out of here. We have the ability to vote on things that impact our day-to-day lives. And so all the power kind of really lies in voting. How'd you get involved in the ACLU in the current fight for your right to vote?

BETTY: When it came to me voting, I met a young lady from the ACLU on a break that was interning on my job. And she told me that the ACLU had been fighting for 10 years to try to get our rights back to vote. And then once we got it back to vote, I registered to vote.

MARQ: Do you remember the first time that you were able to vote?

BETTY: When I was finally able to vote, it was one of the greatest moments in my life. So, what I did, I went and had me a shirt made, said: “First in line, first time voting.” And I had a coworker sit there at six o'clock to make sure I get the first one in line. And I was the first one. And I went in there and voted and came out and it was glorifying. My kids was there. You know, it was like the next day we went out to eat. It's like, my grandkids can see — through this fight, I was able to tell my grandkids

44 “The Office of Programs and Re-Entry is committed to leadership in rehabilitative programs that support the improvement and readiness of lives in our custody. By employing evidence-driven strategies, the Office of Programs and Re-Entry increases security and public safety by providing programming for productive learning, positively transforming behaviors, and teaching pro-social skills that assist with re-integration into communities.” Source: http://www.dc.state.fl.us/development/index.html

“In May, the Florida Department of Corrections made $24.9 million in budget cuts, due to the Department being underfunded by the state budget. The cuts canceled or decreased funding for 67 facilities across the state, including to facilities that help inmates get jobs before release, as well as mental health and substance abuse programs, and even prison chaplain services. The cuts all come into effect at the beginning of the new fiscal year, on July 1.” Source: https://www.wlrn.org/news/2018-06-21/how-one-florida-inmate-was-hit-hard-by-prison-release-program-cuts
how important it is to vote and always, no matter what choices you make, you still have a right and you have a right, you have a right for a second chance. Never, never give that up.

And then they came out with the new thing in June, which I really don't know the name. And we fought, we fought, we fought, you know? So the ACLU is the major reason why I'm such a strong fighter because they taught me that you fight what you feel is right. And justice. And I feel like we earned our right back to vote in 2019. The penalty that they impose on us, the life sentence that they uphold us was done away with. So for them to come back and talk about court costs and fines... nah. It was never about that.

MARQ: Yeah I agree. That's just an extra way to place barriers in front of you, but kind of, it sounds like what you're talking about is really similar to like, the experiences that I have, and the experiences like, of the people that we work with, right. Or that I work with through the organization that I'm the director of, Chainless Change. And it's basically helping people figure out how to navigate all of these obstacles, all of the barriers that are placed in front of you after you have a criminal conviction. Like, the process for payment is really unclear. They were really saying, oh, if you want to resolve this, you have to pay it all upfront and I'm like, I can't afford to pay this upfront. Hell, I could barely like, afford to talk to you right now. And so then we kind of started looking at actual, like actually communicating with the courts about addressing the fines and fees. You can't imagine not having one bad month between now and 2031. Hell, nobody thought corona was going to happen.

BETTY: 2031?!

MARQ: Right? It's been a bad six months! The challenge with that is, is that this stuff goes in front of a judge who never has to live with the types of decisions that they hand down to people. They never have to deal with the type of consequences that we're dealing with, or understand what the impacts of the decisions that they're making are because they're disconnected from the folks that they're judging. And that's the problem. And that's why we need to be able to vote. What do you think the next challenges are for us? How do you, how do you think this'll, like, what's the next chapter of this?

BETTY: I, I don't, I don't deal with the unknown.

MARQ: Even though you can't vote, I'm sure you can inspire a bunch of people to go out there. I'm sure that you can drive somebody who might not have the ability to vote. There's a lot you can do with it. And so I realized that even though I can't get over to and place of a vote this time, I can't cast my ballot this time around, I can do my part to ensure that my community is educated on who's seeking to represent us, what their records are in regards to issues that are important to the community.

BETTY: I would love to do anything that make a difference in somebody's life, I would love to do it.

MARQ: When we talk about like the, the ability to vote being given to us, right, or not even being given, because it's our, it's our right as citizens.

BETTY: True that!


46 Voting rights advocates in the state say that the newly passed measure will undoubtedly limit the impact of Amendment 4, a popular 2018 ballot initiative that restored voting rights to people 'who have completed all terms of their sentence, including parole or probation,' excluding those who convicted of felony sexual offenses or murder. As many as 1.4 million Floridians were initially estimated to be eligible to vote under the amendment, which went into effect in January. Source: https://www.vox.com/policy-and-politics/2019/5/3/18528564/amendment-4-florida-felon-voting-rights-fees
MARQ: And then because of the ongoing battle that has ensued, it being taken away, it frustrates me. I’m pissed off as hell. For me, it’s really disheartening to know that I can be engaged in the community. I can show that I am a productive member of the community. I uphold high, high, moral, like I uphold my great morals. And to not be able to be a part of making decisions about what impacts our community frustrates me. And it makes me understand that there's so much power in voting, that people who lead this country and people who lead the state want to continue to suppress our votes to ensure that they're, they have the ability to remain in power.

BETTY: I love it. I love it. I love it. He is so young and he's got so much going on. I love it.

MARQ: Thanks.

BETTY: I really do.

CARVELL: It’s an election year. And Betty and Marq are just two of millions of Black people in this country who won’t be able to vote this year, but who are still engaged.\(^\text{47}\)

I am thinking about me forgetting to change my address when I first moved to college in 1992, and how now, with the economy upside down forcing people to move around, will people get their mail-in ballots? Will the lines at voting centers be too long? It just feels that at times when voting should be accessible, it’s just getting harder and harder.

On top of that, every four years we hear the call to rock the vote, make sure to vote, and in response you always hear people saying: “What does it even matter? Nothing is gonna change.” And I sympathize with that. Hearing this history, change is slow. And that’s frustrating. It’s something Dr. Williams is talking about with his son.

DR. WILLIAMS: With my children, with them coming up in this moment where there is so much, um, for lack of a better term, um, kind of, uh, you know, dismissal of voting as a means of moving the needle where everybody talks about direct action protest and they kind of discount this as being important. I just had that conversation with him again about the meaning of what this means, because, you know, again, this is something as a fundamental attribute of citizenship, we have to decouple that from the other work we need to do in order to make the promises of American democracy, real, the other work we need to do in order to reify and affirm Black life, the other work we need to do to dismantle racist structures. But at the end of the day, I fought and earned my right to vote with the blood of ancestors. And I'm going to exercise that right. And I'm disappointed when anyone else walks away from that, because I think that fundamentally what they do is deny the sacrifice of those generations that came before, who recognized that this is not, you know, um, an added perk or a benefit. This is essential to what it means to be a citizen.

CARVELL: Jeffery Robinson agrees.

JEFFREY: You know, I, I think, uh, the different consciousness of people about the importance of voting, uh, has gone up and down throughout history. But I will say this: anyone with a functioning cerebral cortex has to understand the importance of the 2020 election, regardless of where you are politically. Anybody that doesn't understand that this next election is going to be critical for the direction America goes — you know, I have to question what they're thinking about.

CARVELL: There is a reason that there has been so much effort, time and time again, to suppress, limit, divert, and otherwise silence the Black vote. It’s because it matters. And they know it matters. Of course voting is not some magic bullet that solves every problem, and anyone who suggests

\(^{47}\) Black Americans constitute 2.2 million of the disenfranchised, banned from voting at four times the rate of all other racial groups combined. Its history betrays a truth the nation has continuously refused to recognize in the experience of its most intimately reviled child: enslaved Africans and their descendants. Source: [https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box](https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box)
otherwise is lying to you. But without even the slightest opportunity for representation in our government, everything we are trying to do is more complicated, more difficult than it already is. Not voting harms vulnerable communities. Period. It is commonplace to believe that there is a choice between electoral politics or direct action protest. But as far as I’m concerned, there isn’t. Voting is an act of care for yourself and your community. And direct action is an act of care for yourself and your community. That’s why the two often go hand in hand.

For more on what you can do now and in the future to secure and protect voting rights for all, check out our show notes.

In our next episode, we’re taking a deeper look at the history and significance of Black rebellion and protest.

MISKI: Black people deserve all of the strategies because Black people deserve all of the things. Uh, we really, really do.

CARVELL: Our production team at Cosmic Standard is:

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I’m Carvell Wallace. And this is Who We Are.