

## The Value of the Black Vote: How Iowa's Saga of Suppression & Racial Iniquity Rippled From 1868 to 2020

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On Election Day—no more than sixty years ago—four unanswerable questions awaited Mr. Clarence Gaskins, an African-American voter hoping to cast his ballot in the upcoming general election. Upon arrival at his designated polling location, [Mr. Gaskins] was ushered by a group of dutiful white men [who lead him] down a narrow corridor and into a small room.

In that room, he found a jar of corn, a cucumber, a watermelon, and a bar of soap. All had been . . . neatly [and precisely] arranged, as if in anticipation of his arrival. As he sat with a half-smile—staring at the still objects—the dutiful white men sat silently behind him; staring [with their gazes] at his back. In that moment of silence, it became quite clear that white supremacy was both powerful and desperate. Desperate enough that it could tie the fundamental right to vote to something as arbitrary as guessing the number of corn kernels in a jar. Powerful enough that it would do anything to keep Mr. Gaskins and people who looked like him pinned beneath the power and those who wield it. “How many kernels of corn are in the jar? How many bumps on the cucumber? How many seeds in the watermelon? And how many bubbles in the bar of soap?” As the dutiful white men [remained seated] . . . behind [Mr. Gaskins, silent,

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acquiescent, gaze undisrupted and fixed,] . . . the polling official made it very clear that, no matter the . . . answer, . . . [Mr. Gaskin would never be correct.] And that election year, his vote was neither cast nor counted.<sup>1</sup>

Iowa was the last remaining state in the country to still impose a lifetime voting ban for people with a felony conviction—a classification which is disproportionately applied to African-Americans.<sup>2</sup>

To understand why Iowa was an infamous outlier in this category, we must first examine and then wrestle with Iowa's profound history of suppressing virtually every right of its African-American citizens. Only then can we better understand that the Legislature's attempt to silence the voices of Iowa's most marginalized groups began well over 150 years ago.

The insurmountable challenges of securing civil and political rights for African-Americans in Iowa preceded its statehood. The Territorial Legislature of Iowa made its first attempt at suppressing the rights of African-Americans beginning in 1838,<sup>3</sup> when the Legislature required that all African-Americans entering Iowa after April 1, 1839,<sup>4</sup> produce a *certificate of freedom*<sup>5</sup> and post a \$500 bond.

The Legislature would soon make another successful attempt at suppressing the rights of its African-American citizens on January 6, 1840,<sup>6</sup> when

<sup>1</sup> Cierra Newman, Letter to the Editor, *Let My People Go . . . Vote*, IOWA LAW., July 2020, at 13, [https://perma.cc/U5MV-NUZZ]; see Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), [https://perma.cc/8Y7V-APTIP].

<sup>2</sup> Stephen Gruber-Miller & Ian Richardson, *Gov. Kim Reynolds Signs Executive Order Restoring Felon Voting Rights, Removing Iowa's Last-in-the-Nation Status*, DES MOINES REG. (Aug. 5, 2020, 11:08 AM), [https://perma.cc/BK7R-7BZM]; see Cierra Newman, *In Iowa, Before 1868, My Forefathers Could Not Vote; 150 Years Later, Neither Can My Father*, DES MOINES REG. (Mar. 7, 2020, 3:59 AM), [https://perma.cc/8GN3-N54T].

<sup>3</sup> *Laws and African-American Iowans: Black Codes*, IOWA PBS, [https://perma.cc/B2GR-NBSF] (last visited May 6, 2021) [hereinafter IOWA PBS].

<sup>4</sup> *Did Iowa Ever Pass a "Black Exclusion" Law?*, STATE LIBRARY OF IOWA, [https://perma.cc/5M5Z-3EX5] (last visited May 6, 2021) [hereinafter STATE LIBRARY OF IOWA].

<sup>5</sup> *Id.* (explaining that in Iowa, during the very first session of Iowa's Territorial Legislature, an Act entitled "Blacks and Mulattoes" was passed. It stated that "from and after the first day of April next, no black or mulatto person shall be permitted to settle or reside in this Territory, unless he or she shall produce a fair certificate, from some court within the United States, of his or her actual freedom, which certificate shall be attested by the clerk of said court, and the seal thereof annexed thereto by the said court, and give bond, with good and sufficient security, to be approved of by the board of county commissioners of the proper county in which such person of color may reside, payable to the United States, in the penal sum of \$500, conditioned that such person shall not at any time become a charge to the said county in which the said bond shall be given, as also for such person's good behavior. And a conviction of such negro or mulatto, of any crime or misdemeanor against the penal laws of this Territory, shall amount to a forfeiture of the condition of such bond . . .").

<sup>6</sup> *Id.*

Iowa passed a law prohibiting interracial marriage,<sup>7</sup> followed by its rejection of African-American voting rights in 1844,<sup>8</sup> and again in 1846.<sup>9</sup> Soon thereafter, the Legislature would strip virtually every right left to African-Americans, namely barring African-Americans from holding office in the Iowa General Assembly,<sup>10</sup> serving in the military,<sup>11</sup> and testifying in court.<sup>12</sup> By 1851,<sup>13</sup> the Legislature passed a law prohibiting the migration of African-Americans to the state.

By 1857, the Iowa Legislature would reconsider whether to grant voting rights to African-Americans by allowing citizens to cast a ballot to decide whether to strike the word “white” from the Iowa Constitution.<sup>14</sup> The citizens weighed in; African-Americans were again refused the right to vote. It was not until more than a decade later, in 1868, that the Iowa Legislature would eliminate the word “white” from the Iowa Constitution and finally grant the right to vote to African-American men.<sup>15</sup>

With the recent signing of an executive order by the Governor of Iowa more than 150 years later, Iowa is finally ending its lifetime ban on voting for people with a felony conviction—a conviction that disproportionately affects African-Americans. However, not only did the Iowa Legislature consider a measure eerily reminiscent of the 1838 *certificate of freedom* and bond requirement, the Legislature had gone as far as proposing a law that would require persons with a felony conviction to produce a *certificate of restoration of citizenship* and pay every cent of restitution owed before they would be eligible to have their voting rights restored.<sup>16</sup> Were the bill to pass, the Legislature—like in 1838—would have effectively tied one’s rights to the ability to repay. If the bill passed, it would be yet another instance where one piece of legislation is passed to undermine the otherwise corrective and just purpose of another—a practice I’ve coined “illusory impartation.”<sup>17</sup>

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<sup>7</sup> Robert R. Dykstra, *White Men, Black Laws*, 46 ANNALS OF IOWA 403, 409 (1982).

<sup>8</sup> G. Galin Berrier, *The Negro Suffrage Issue in Iowa—1865–1868*, 39 ANNALS OF IOWA 241, 242 (1968).

<sup>9</sup> *Id.*

<sup>10</sup> STATE LIBRARY OF IOWA, *supra* note 4.

<sup>11</sup> IOWA PBS, *supra* note 3.

<sup>12</sup> *Id.*

<sup>13</sup> STATE LIBRARY OF IOWA, *supra* note 4.

<sup>14</sup> Berrier, *supra* note 8.

<sup>15</sup> IOWA PBS, *supra* note 3.

<sup>16</sup> S. File 2129, 88th Gen. Assemb., Reg. Sess. (Iowa 2019), [<https://perma.cc/5E2B-VK8K>].

<sup>17</sup> Illusory impartation is a political practice whereby state or federal public actors engage the executive, legislative, or judicial system to “undo” the outcome as a means of addressing current, culturally controversial issues, most frequently involving the classes protected under the Constitution’s strict scrutiny standard.

On its face, the proposed legislation would have restored voting rights for those with felony convictions. But in reality, it did nothing more than create a loophole—ironically doubling as yet another hoop—a convicted person would have to jump through in order to meaningfully exercise their rights as citizens. As Iowans. As Americans.

Even in the absence of passage, its proposition and purpose constitute performative justice intending to maintain the statewide, *de facto* “separate, but equal” status quo; in application, it has no meaningful impact on actualized access to the nation’s most fundamental political process for those with felony convictions in Iowa.

In fact, Iowa is rarely successful in collecting debt from those required to repay restitution.<sup>18</sup> Where I am from, an overwhelming majority of people charged with a non-violent crime are indigent offenders who cannot afford legal counsel, let alone payment in restitution for the crimes they committed. Penalizing a person for the same crime twice—otherwise known as double jeopardy—is illegal. With a current lifetime ban on voting for people with a felony conviction, Iowa mutes and suppresses African-Americans from meaningful participation in democracy and unreasonably restricts their federal constitutional right to vote. Moreover, Iowa imposes unrealistic requirements for people with felony convictions to surmount arbitrary statutory barriers—even after paying their mandated societal debt. Today, just as in 1838, Iowa has considered tying one’s rights to their ability to pay.

In a state that disproportionately jails and convicts its African-American citizens (where African-Americans make up less than four percent of the population but twenty-five percent of its prison population) by tethering the right to vote to the *injustice* system—a system, which at its inception, did not consider African-Americans in the calculus of persons worthy of citizenship, rights, or decency. This further disenfranchises African-Americans, and by its very design, makes Iowa’s voting base overwhelmingly white.<sup>19</sup>

While the proposed measure was just that—a proposal—it reveals to the people of Iowa what was in the hearts and the minds of its Legislature. Even more, it allows Iowans to predict precisely what is to come down the legislative pipeline, particularly in light of a recent federal appeals court decision that held that those who have completed their sentence cannot vote in the Fall, nor in the future, unless they pay fees and fines owed to the state.<sup>20</sup>

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<sup>18</sup> CAROLYN COPPS HARTLEY & KELLEIGH THORBURN MCCRORY, IOWA CRIME VICTIM COMPENSATION PROGRAM: RESTITUTION INITIATIVE, 39–41 (2015) (explaining that barriers to obtaining restitution include victims’ failure to request restitution, the victim or court’s inability to determine the loss experienced, and perceptions of the offender’s inability to pay which make it difficult for Iowa to successfully collect on behalf of victims).

<sup>19</sup> Katarina Sostaric, *Iowa Department of Corrections Rolling out Policy to Address Racial Disparities*, IOWA PUBLIC RADIO NEWS (Dec. 9, 2019), [<https://perma.cc/P8QQ-UCQD>].

<sup>20</sup> See *Jones v. Governor of Fla.*, 950 F.3d 795, 800 (11th Cir. 2020).

As a young girl who grew up with an incarcerated father, I felt the effects of his absence. From missed basketball games and cello recitals to the financial burden placed on my mother, I experienced firsthand the challenges that awaited him long after serving his time and re-entering his community. My father's struggle to obtain full citizenship rights after incarceration is in part why I became an attorney.

My father, just like his forefathers, cannot vote.

As an African-American female attorney, I fight because it was the African-American citizens of Iowa who fought to make the words of the Iowa Constitution true—especially the part about *all* people being free and equal.<sup>21</sup> Today's Legislature could undoubtedly learn something from the 1868 Iowa Legislature in a moment of self-reflection. Perhaps that might compel the Legislature to introspect and retrospect by analyzing and taking accountability for the ripples caused by the wake of pervasive and unjustified racially-motivated suppression—the rings of which still reach into today's reality. Perhaps with the conclusions reached in review thereof would give way to reconciliation and resolution for the question: why is it that in Iowa, before 1868, my forefathers could not vote, and more than 150 years later, neither can my father?

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<sup>21</sup> IOWA CONST. art. I, § 1.

