
SYMPOSIUM:
FEATURED
ARTICLES

THE WILMINGTON MASSACRE AND COUP OF 1898 AND
THE SEARCH FOR RESTORATIVE JUSTICE

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I. INTRODUCTION

Long before domestic terrorists stormed the U.S. Capitol on January 6, 2021, another violent attack on a democratically elected government occurred in Wilmington, North Carolina. This one succeeded.¹ On

*Authors' Notes: Sandra L. Rierson, Visiting Associate Professor of Law, California Western School of Law; Professor of Law, Thomas Jefferson School of Law, San Diego, California. Melanie Hope Schwimmer, Amherst College Class of 2023. We would like to dedicate this article to the victims and the survivors of the Wilmington Massacre and Coup of 1898. Courageous journalist and civil rights activist Ida B. Wells once famously said, "The way to right wrongs is to turn the light of truth upon them." We hope that this article will play some part in shining the light of truth upon the wrong that was inflicted on the Black community in Wilmington in 1898. The systemic racism that enabled the Wilmington Massacre and Coup did not begin or end in 1898. Confronting it is a necessary step in the continuing quest for restorative

November 10, 1898, White supremacists orchestrated a coup d'état in Wilmington.² They shot and killed Black people, burned the offices of the Black newspaper, and ousted Black elected and appointed government officials and their allies, all of whom were replaced by White members of the Democratic Party.³ The leadership of the Black community was

justice in Wilmington and beyond. Our efforts were made possible by the support of numerous individuals, particularly those who have long pursued justice in Wilmington, including Professor Irving L. Joyner, Professor Kimberly Cook, Mr. Jim Downey, Mr. Tim Pinnick, Ms. Deborah Maxwell, and Ms. Suzanne Belleci. We are also grateful to the editors of the Elon University School of Law Symposium for hosting *Reparations: Restorative Justice for Racial Disparities* and giving us the time and space to share our work. We would also like to thank Professor Roy L. Brooks of the University of San Diego School of Law and the members of the California Western School of Law summer symposium series, especially Professors William Aceves, Amy Day, Pedro Gerson, Danielle Jefferis, Kenneth Klein, and Liam Vavasour, for their helpful input and critiques.

¹ The successful insurrection of November 10, 1898, and the attempted one of January 6, 2021, share many parallels, particularly in terms of the role played by propaganda in inciting them. See, e.g., Tyler Dukes, *More Than 100 Years Ago, NC's Largest City Grappled with its Own Insurrection*, NEWS & OBSERVER (Jan. 11, 2021, 10:13 AM), <https://www.newsobserver.com/article248340085.html>; Edwin Rios, *We've Had a White Supremacist Coup Before. History Buried It.*, MOTHER JONES (Jan. 22, 2021), <https://www.motherjones.com/politics/2021/01/weve-had-a-white-supremacist-coup-before-history-buried-it/>; Hunter Ingram, *'Better Organized, More Disciplined': Capitol Rioters Mirror Red Shirts in 1898 Wilmington Coup*, STARNEWS ONLINE (Jan. 12, 2021, 3:51 PM), <https://www.starnews.com/story/news/local/2021/01/12/red-shirts-1898-wilmington-insurrection-compared-capitol-rioters/6625112002/>.

² See discussion *infra* Section I.C.; see also Dukes, *supra* note 1, at 3.

³ See discussion *infra* Section I.D. Throughout this article, when the word “Black” is used in a “racial, ethnic or cultural sense,” it will be capitalized, to convey the “essential and shared sense of history, identity and community among people who identify as Black, including those in the African diaspora and within Africa.” *Explaining AP Style on Black and white*, AP NEWS (July 20, 2020), <https://apnews.com/article/archive-race-and-ethnicity-9105661462>; see also Brittany Wong, *Here's Why It's a Big Deal to Capitalize the Word 'Black,'* HUFFPOST (Sept. 3, 2020, 4:13 PM), https://www.huffpost.com/entry/why-capitalize-word-black_1_5f342ca1c5b6960c066faea5. Although this stylistic convention has been widely yet recently embraced, the decision as to whether to capitalize the word “White” is much more fraught and unsettled. The Associated Press and the Columbia Journalism Review, for example, have elected to capitalize “Black” but not “white,” because 1) people who identify as “white” generally do not share a common history and culture to the same degree as people who identify as Black, and 2) capitalizing the word “white” “risks following the lead of white supremacists,” who have long advocated for the capital “W.” Mike Laws, *Why We Capitalize 'Black' (and not 'white')*, COLUMBIA JOURNALISM REVIEW (June 16, 2020), <https://www.cjr.org/analysis/capital-b-black-styleguide.php>; see also David Bauder, *AP Says It Will Capitalize Black but Not white*, AP NEWS (July 20, 2020), <https://apnews.com/article/entertainment-cultures-race-and-ethnicity-us-news-ap-top-news-7e36c00c5af0436abc09e051261fff1f>. However, both the National Association of Black

banished from Wilmington.⁴ This astonishing act of domestic terrorism, which constituted an ethnic cleansing of the Black population in the city, ushered in the Jim Crow era in North Carolina.⁵ Even today, North Carolina's Black population suffers from the ripple effects of the violence and intimidation, racial segregation and discrimination, disenfranchisement, and pervasive economic oppression inflicted on the Black population during this era.⁶ This trauma was enabled, perpetrated, and concealed by the local, state, and federal government, all of whom share responsibility for the death and destruction that occurred on November 10, 1898, and its aftermath.⁷

Restorative justice for the victims of the Wilmington Coup is long overdue. Although some progress was made when the 1898 Wilmington Race Riot Commission issued its findings and recommendations in 2006, not enough has been done to repair the damage done.⁸ Moral, as well as financial, reparations—both individually and collectively—must be paid to achieve reconciliation and social reconstruction of this community.

Journalists and the Diversity Style Guide recommend capitalizing both “White” and “Black” when referring to racial or ethnic groups. See *NABJ Statement on Capitalizing Black and Other Racial Identifiers*, NABJ (June, 2020), <https://www.nabj.org/page/styleguide>; *African American, African-American, Black, black*, THE DIVERSITY STYLE GUIDE, <https://www.diversitystyleguide.com/glossary/african-american-african-american-black-2/> (last updated Feb. 2021). The left-leaning Center for the Study of Social Policy argues that “[t]o not name ‘White’ as a race is, in fact, an anti-Black act which frames Whiteness as both neutral and the standard.” Ann Thuy Nguyen & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize “Black” and “White”*, CTR. FOR STUDY SOC. POL’Y (Mar. 23, 2020), <https://cssp.org/2020/03/recognizing-race-in-language-why-we-capitalize-black-and-white/>. “Moreover, the detachment of ‘White’ as a proper noun allows White people to sit out of conversations about race and removes accountability from White people’s and White institutions’ involvement in racism.” *Id.*; see also Nell Irvin Painter, *Opinion: Why ‘White’ should be capitalized, too*, WASH. POST (July 22, 2020), <https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/>; Eve L. Ewing, *I’m a Black Scholar Who Studies Race. Here’s Why I Capitalize ‘White.’*, ZORA (July 2, 2020), <https://zora.medium.com/im-a-black-scholar-who-studies-race-here-s-why-i-capitalize-white-f94883aa2dd3> (“When we ignore the specificity and significance of Whiteness . . . we contribute to its seeming neutrality and thereby grant it power to maintain its invisibility.”). Because this article seeks to unmask the historic invisibility of race and racism as driving forces in both identity and politics (in Wilmington, North Carolina and beyond), we have chosen to use the capitalized version of “White.”

⁴ See discussion *infra* notes 144–46 and accompanying text.

⁵ See discussion *infra* Section II.B.

⁶ See discussion *infra* Section I.G.

⁷ See discussion *infra* Section I.E.

⁸ See discussion *infra* Section III.A.

Failure to take these crucial steps leaves open wounds, and, as demonstrated at the U.S. Capitol on January 6, 2021, the distinct possibility that history will repeat itself.

In Part I of this article, we give a brief history of the events that occurred in Wilmington in 1898, explaining how the forces of White supremacy used “men who could write, men who could speak, and men who could ride”⁹ to overthrow a democratically elected local government and decimate the Black community in Wilmington. Part II describes the context in which the Wilmington Massacre and Coup occurred. The violence inflicted on this Black community in 1898 was not unique. Rather, it was part of a systemic backlash by White Americans who used violence and political fraud to smother Black citizens’ economic and social progress after the Civil War. In Wilmington, these assaults amounted to an ethnic cleansing of the Black population. We propose a restorative justice framework for righting the wrongs inflicted in 1898, as a way forward. Reparations, an essential step in the path to restorative justice, are long overdue for the victims of Wilmington and other instances of systemic, racialized violence in the United States. Part III of the article examines the work that has already been done in Wilmington to seek justice for the victims of 1898, focusing on the path-breaking work of the Wilmington Race Riot Commission and the report that it issued in 2006. We conclude that, although some progress has been made in Wilmington and throughout the state of North Carolina, these advancements in the cause of racial justice are currently at risk and, in some contexts, under attack. We offer several proposals to continue the pursuit of restorative justice in Wilmington and, more broadly, throughout the state. The work has only just begun.

II. NORTH CAROLINA’S ETHNIC CLEANSING: THE WILMINGTON MASSACRE AND COUP OF 1898

Wilmington is currently the eighth-largest city in the state of North Carolina, with a population of approximately 123,000 people (about 76.5% White and 18.4% Black).¹⁰ Most North Carolinians would be surprised to learn that, in 1898, Wilmington was the most populous city in

⁹ See *infra* note 286.

¹⁰ U.S. Census Bureau, *QuickFacts: Wilmington City, North Carolina*, CENSUS.GOV, <https://www.census.gov/quickfacts/wilmingtoncitynorthcarolina> (last visited Aug. 19, 2021); *Ten Largest Cities in North Carolina*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/cities/north-carolina> (last visited Aug. 19, 2021).

the state, with a predominantly Black population.¹¹ For a period after the Civil War, Wilmington was known as a place where freedmen could find work and prosper.¹² And they did.¹³ All of that changed, however, after the election of 1898.¹⁴ Democrats used White supremacist propaganda and guns to wage war against the city's Black population and its democratically elected Fusionist government—and they won.

A. *The Establishment and Rise of Wilmington*

Established in 1731 and incorporated in 1739, Wilmington was one of the first towns in southeastern North Carolina.¹⁵ When English settlers came onto the land they called Newton (New Town) in the 1720s, they violently displaced, wounded, and killed members of the Waccamaws, Saponis, Occaneechis, and Enos nations.¹⁶ Ripe with open wounds of settler colonialism, the land surrounding Wilmington became fertile ground for rice plantations cultivated by enslaved Africans.¹⁷ Plantation-based economic output fueled the development of the railroad system, which in turn enhanced monetary growth and potential for the southern city.¹⁸ Encompassed by acres of timber, located on a powerful body of water, and connected to the rest of the country by the railroad, Wilmington became North Carolina's largest port in the antebellum era.¹⁹ The port city made up the vast majority of New Hanover County's population and economy.²⁰ Wilmington's geographic and economic capital brought the

¹¹ Scott Nunn, *Wilmington Has a Long History of Injustice, Exclusion of Black Residents*, STARNEWS ONLINE (Jul. 8, 2020, 6:00 AM), <https://www.starnewsonline.com/story/news/2020/07/08/wilmington-has-long-history-of-injustice-exclusion-of-black-residents/42237727/>.

¹² *Id.*

¹³ *Id.*

¹⁴ Jacob M. Thomas, *The Cape Fear Ran Red: Memory of the Wilmington Race Riot and Coup D'tat of 1898*, MARSHALL UNIV. 27–29 (2019), <https://mds.marshall.edu/cgi/viewcontent.cgi?article=2267&context=etd>.

¹⁵ LERAE S. UMFLEET, *A DAY OF BLOOD: THE 1898 WILMINGTON RACE RIOT 1* (rev. ed. 2020).

¹⁶ Christopher Arris Oakley, *Introduction* to DENNIS ISENBERGER, *NATIVE AMERICANS IN EARLY NORTH CAROLINA*, at ix–xii (2013).

¹⁷ UMFLEET, *supra* note 15, at 1.

¹⁸ *Id.*

¹⁹ ALAN D. WATSON, *WILMINGTON: PORT OF NORTH CAROLINA (STUDIES IN MARITIME HISTORY)*, 46, 136 (1991).

²⁰ UMFLEET, *supra* note 15, at 1.

city into the center of many social and political matters in North Carolina and the entire southern region of the United States.²¹

Enslaved and free Black people in Wilmington were active in abolition work across the country.²² Many enslaved Black people became famous throughout North Carolina as builders, designers, carpenters, masons, plasters, and sometimes even contractors.²³ At the turn of the nineteenth century, David Walker was born a free man in Wilmington and saw slave resistance movements and skilled enslaved workers throughout the Cape Fear region that influenced his important political appeal, which he penned years later.²⁴ *David Walker's Appeal*, which calls out the horrific injustices perpetrated against African Americans, is one example of the early national political impact of the region, which would only increase as the city became an essential piece in the Confederate strategy in the Civil War.²⁵

On the eve of the war, New Hanover County's enslaved population of 7,103 (with 3,777 living in the city) was the tenth highest in North Carolina.²⁶ The pre-war social hierarchy reflected that of the greater country, with White plantation owners and traditional elites holding the most social capital, followed by White merchants, White working-class people, free Black people, and enslaved Black people.²⁷ These separations would momentarily break down during the Civil War as Wilmington became a battleground.²⁸ Wilmington's geographic location was a major asset for the Confederacy in the Civil War, with the city serving as an essential link in the Confederate supply chain.²⁹ The Confederate army heavily guarded Wilmington's port from nearby Fort Fisher, which thrived economically throughout the war.³⁰ After an extreme bombardment

²¹ *Id.*

²² James E. Newton, *Black Americans in Delaware: An Overview*, UNIV. DEL., <https://www1.udel.edu/BlackHistory/overview.html> (last updated June 27, 1997).

²³ DAVID WALKER, *DAVID WALKER'S APPEAL TO THE COLOURED CITIZENS OF THE WORLD*, at xv (Peter P. Hinks ed., 2000).

²⁴ *Id.*

²⁵ Hasan Crockett, *The Incendiary Pamphlet: David Walker's Appeal in Georgia*, 86 J. NEGRO HIST. 3, 305–07, 309 (2001).

²⁶ UMFLEET, *supra* note 15, at 2.

²⁷ *Id.* at 2–4.

²⁸ *Id.* at 3–4.

²⁹ *Id.* at 5.

³⁰ See H. LEON PRATHER, *WE HAVE TAKEN A CITY: THE WILMINGTON MASSACRE AND COUP OF 1898* 18 (2006).

campaign, Fort Fisher fell to Union forces in January 1865, with the city following shortly after, captured on February 22, 1865.³¹ After the Union forces occupied Wilmington in 1865, newly freed Black people migrated from the outskirts to the center of the city.³² White New Hanover County residents of all socioeconomic backgrounds faced damaged homes and livelihoods as they worked desperately to limit the freedom and equality of Black people during Reconstruction and preserve the pre-war status quo of White dominance.³³

B. Wilmington's Thriving Black Middle Class and the Ephemeral Success of Reconstruction

Reconstruction in Wilmington began shortly after Confederate General Joseph Johnston surrendered to General Sherman in April 1865, with mixed success.³⁴ In his initial months in office, President Andrew Johnson pardoned Confederate soldiers and established a provisional government in North Carolina with the assumption that each state would write a new constitution.³⁵ Those who could vote before the war and received presidential pardons were eligible to elect delegates to draft the new constitution, essentially blocking any Black representation at the convention.³⁶ While excluded from participating in the creation of a new state constitution, Black leaders across North Carolina created a “Freedmen’s Convention” in September 1865.³⁷ The convention brought over 120 Black men from a wide range of backgrounds and locales.³⁸ Although the White men completely ignored their proposals when writing a new constitution, the convention laid the foundation for a statewide network of Black leaders.³⁹

³¹ DAVID ZUCCHINO, WILMINGTON’S LIE: THE MURDEROUS COUP OF 1898 AND THE RISE OF WHITE SUPREMACY 3 (2020).

³² UMFLEET, *supra* note 15, at 1.

³³ See Thomas, *supra* note 14, at 27–29.

³⁴ See Thomas, *supra* note 14, at 12–14; see also John G. Barrett, *Sherman and Total War in the Carolinas*, 37 N.C. HIST. REV. 3, 367, 378–80 (1960).

³⁵ Proclamation by the President of the United States *Granting Full Pardon and Amnesty to All Persons Engaged in the Late Rebellion*, LIBR. CONG. (Dec. 25, 1868), <https://www.loc.gov/resource/rbpe.23602600/>.

³⁶ UMFLEET, *supra* note 15, at 7.

³⁷ *From North Carolina; Freedmen Convention—The State Convention—Letters of Advice*, N.Y. TIMES (Oct. 7, 1865), at 2–3, <https://www.nytimes.com/1865/10/07/archives/from-north-carolina-freedmen-conventionthe-state-conventionletters.html>.

³⁸ *Id.*

³⁹ See *id.*

While Wilmington emerged with a pre-war White supremacist society, the city's economy expanded and provided mobility for newly proclaimed Black citizens.⁴⁰ Wilmington provided more economic opportunities for Black people who stayed after the war than those who traveled westward, as the tar, turpentine, and cotton industries fueled economic growth in the city.⁴¹ As a result, many Black Americans migrated to Wilmington from other parts of the state.⁴² For the next two decades, Black artisans and businessmen worked to gain wealth, which, in some cases, rivaled that of their White peers.⁴³ By 1887, Wilmington was home to twenty-four commercially rated Black owned businesses.⁴⁴ Black people in the city owned ten of the eleven eating houses and twenty of the twenty-two barbershops.⁴⁵ The Freedmen's Bureau established six schools for Black students in the city to invest in future leaders and businessmen.⁴⁶ Black residents developed literary societies, built libraries, and formed their own churches, which became the backbone of Black civic life.⁴⁷

Another key piece of Black civil and economic life in Wilmington was the *Daily Record*, a Black-owned newspaper edited by Alexander Manly.⁴⁸ The *Daily Record* was the only Black-owned daily newspaper in the country.⁴⁹ Manly, a descendant of Governor Charles Manly (who was White), was born in 1866 outside of Raleigh and relocated to Wilmington after spending one year at Hampton University in Virginia.⁵⁰ Alexander Manly acquired a used printing press from the *Wilmington Messenger* and teamed up with his brothers to run a successful paper in the 1890s.⁵¹ Some White people subscribed to the *Daily Record* and considered it a “very

⁴⁰ See Richard C. Rohrs, *The Free Black Experience in Antebellum Wilmington, North Carolina: Refining Generalizations About Race Relations*, 78 J. S. HIST. 3, 615, 622–27 (2012).

⁴¹ UMFLEET, *supra* note 15, at 30; see PRATHER, *supra* note 30.

⁴² UMFLEET, *supra* note 15, at 30.

⁴³ *Id.* at 2–3.

⁴⁴ *Id.* at 30.

⁴⁵ Timothy B. Tyson, *The Ghosts of 1898: Wilmington's Race Riot and the Rise of White Supremacy*, NEWS & OBSERVER, at 4 (Nov. 17, 2006), <https://media2.newsobserver.com/content/media/2010/5/3/ghostsof1898.pdf>.

⁴⁶ LERAE UMFLEET, 1898 WILMINGTON RACE RIOT COMM'N, 1898 WILMINGTON RACE RIOT REPORT 31 (2006) [hereinafter WILMINGTON REPORT].

⁴⁷ UMFLEET, *supra* note 15, at 18.

⁴⁸ ZUCCHINO, *supra* note 31, at 47–48.

⁴⁹ DAVID S. CECELSKI & TIMOTHY B. TYSON, DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY 27 (1998).

⁵⁰ ZUCCHINO, *supra* note 31, at 46–47.

⁵¹ *Id.* at 48.

credible colored paper.”⁵² The paper became a progressive voice on racism and improvement for Black lives in Wilmington.⁵³ Its editorials, which argued for increased racial equality, frequently upset many White residents of the state and county.⁵⁴

One of Manly’s editorials in particular was used by Democrats to stir White outrage in the state and justify their coup d’état in 1898.⁵⁵ The editorial was penned in response to a speech given by Rebecca L. Felton of Georgia on August 11, 1897.⁵⁶ Felton, who would go on to become the first woman to serve in the Senate,⁵⁷ professed support for lynching Black men who attracted White women, even if it meant lynching a thousand Black men a week.⁵⁸ In response, Manly advised White men to guard their women more closely and not be intimate with Black women.⁵⁹ He also suggested that relationships between Black men and White women were often consensual.⁶⁰ After the editorial, Manly received death threats and hired armed Black men to protect the office of the *Daily Record*.⁶¹ A year later, Josephus Daniels, a key architect of the Democrats’ White Supremacist Campaign of 1898, reprinted the piece with the title “Vile and Villainous,” to drum up support for White supremacy before the election.⁶²

In addition to their economic success, Black leaders in Wilmington and across North Carolina entered public office and gained political capital.⁶³ In 1870, the Black population of Wilmington (7,920), outnumbered the White population by over 2,000.⁶⁴ This population divide outraged the White Democrats who controlled the city, as they had to

⁵² UMFLEET, *supra* note 15, at 61.

⁵³ See, e.g., ZUCCHINO, *supra* note 31, at 48–49.

⁵⁴ *Id.* at 49.

⁵⁵ See Amanda K. Frisken, “A Song Without Words”: Anti-Lynching Imagery in the African American Press, 1889–1898, 97 J. AFR. AM. HIST. 240, 262 (2012).

⁵⁶ ZUCCHINO, *supra* note 31, at 84–87.

⁵⁷ *Rebecca Latimer Felton: A Featured Biography*, U.S. SENATE, https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Felton.htm (last visited Aug. 5, 2021).

⁵⁸ Tyson, *supra* note 45, at 8.

⁵⁹ UMFLEET, *supra* note 15, at 63 (reproducing the text of Manly’s editorial dated Aug. 18, 1898).

⁶⁰ *Id.*

⁶¹ *Id.* at 64.

⁶² ZUCCHINO, *supra* note 31, at 92.

⁶³ See, e.g., WILMINGTON REPORT, *supra* note 46, at 48.

⁶⁴ *Id.* at 33.

appease interests of Black Republicans or risk losing their electoral power.⁶⁵ Many Black political figures gained their roles due to their economic success; for example, North Carolina Governor Daniel Russell appointed successful Black businessman John Norwood to the Wilmington Board of Aldermen in 1897.⁶⁶ President William McKinley reappointed John Dancy, a Black Republican, to the coveted post of Collector of Customs at the Port of Wilmington, replacing a prominent White Democratic leader.⁶⁷ Dancy earned \$4,000 a year in this role, which amounted to \$1,000 more than the governor of North Carolina.⁶⁸ These appointments, which infuriated White supremacists, came as part of the larger Fusion government within the state.⁶⁹

Born out of the growth of the Populist party, the Fusion party in the late 1880s became the party of poor White farmers and Black Americans in North Carolina.⁷⁰ This joint party successfully challenged the Democratic stronghold in New Hanover County, winning every race for which the party put up a candidate in the 1894 elections.⁷¹ While the party served the interests of White farmers and Black workers, the Fusion party limited Black patronage appointments to avoid contentious issues of race, leading many Black people in Wilmington to lose faith in the party.⁷² Fusionists barely expanded Black representation at the highest positions and instead focused on reforming and liberalizing voting and election laws, which outraged White Democrats.⁷³ As White Fusionists continued to distance themselves from Black Republicans, the party faced internal trouble, and schisms grew between the Populists and Republicans over the protection of Black civil rights.⁷⁴

⁶⁵ See, e.g., *id.* at 37–39.

⁶⁶ See ZUCCHINO, *supra* note 31, at 223.

⁶⁷ PRATHER, *supra* note 30, at 57.

⁶⁸ *Id.* at 23.

⁶⁹ See WILMINGTON REPORT, *supra* note 46, at 46–48.

⁷⁰ See James L. Hunt, *Fusion of Republicans and Populists*, NCPEDIA (2006), <https://www.ncpedia.org/fusion-republicans-and-populists>.

⁷¹ UMFLEET, *supra* note 15, at 23.

⁷² WILMINGTON REPORT, *supra* note 46, at 40.

⁷³ *Id.* at 39–40.

⁷⁴ *Id.* at 40–42.

C. White Backlash and Democrats' Plot to Overthrow the Fusionist Government

Infuriated by the rising success of Black people in Wilmington and the elections of Fusionists, leaders of the Democratic party were determined to uphold White supremacy;⁷⁵ remove Fusionist politicians from office;⁷⁶ and retake a firm grip on the state and county.⁷⁷ They determined that “racist appeals were the hammer they needed to shatter the fragile alliance between poor whites and Blacks,” and they used them to great effect.⁷⁸ The Democratic party leaders targeted six White Fusionist politicians in Wilmington who they proclaimed had helped bring “Negro domination” to the city.⁷⁹ To send this message, they distributed “Remember the Six” handbills across Wilmington.⁸⁰

The chair of the Democratic Party, Furnifold M. Simmons, created a platform to remove the Fusionists based on anti-Black policies and rhetoric.⁸¹ The leader of the local Wilmington Democratic Party, George Rountree, intensified the dissemination of White supremacist propaganda throughout the city.⁸² To spread and gain support for this platform, Simmons relied on the written words printed in the *News and Observer* by Josephus Daniels, the oration skills of leaders like Charles B. Aycock and Alfred Waddell, and the intimidation campaign of the Red Shirts.⁸³ The groundwork laid by the Red Shirts, inflammatory print campaign, and fiery oration “moved beyond the standard ‘white man must rule’ rhetoric, and another useful tool in the white supremacy arsenal—fear—emerged.”⁸⁴

The twin themes of the White supremacist campaign were (1) “redemption” from “negro domination”; and (2) the need to protect

⁷⁵ Tyson, *supra* note 45, at 6–7.

⁷⁶ *See id.* at 7.

⁷⁷ *See id.* at 5–7.

⁷⁸ *Id.* at 1.

⁷⁹ ZUCCHINO, *supra* note 31, at 72. The six Fusionists were Mayor Silas Wright, Police Chief John Melton, Deputy Sheriff George Z. French, businessmen William H. Chadbourn and Flavel W. Foster, and lawyer Caleb B. Lockery. *Id.* at 114.

⁸⁰ WILMINGTON REPORT, *supra* note 46, at 72.

⁸¹ *Id.* at 59–60.

⁸² UMFLEET, *supra* note 15, at 45.

⁸³ ZUCCHINO, *supra* note 31, at 65, 72.

⁸⁴ UMFLEET, *supra* note 15, at 52.

southern White women from the “looming Black beast rapist.”⁸⁵ Josephus Daniels’ *News and Observer* published articles hammering these themes, using “sexualized images of Black men and their supposedly uncontrollable lust for white women” to frighten and enrage his readers.⁸⁶ Daniels also printed visual propaganda based on the racist cartoons of Norman Jennett to inspire vigilantes across the state, especially those who were illiterate.⁸⁷ Along with written messaging, Aycock and Waddell hammered White supremacist themes in speeches given at mass rallies attended by thousands of White men and women.⁸⁸ Charles Aycock gave the “keynote address of the white supremacy campaign” leading up to the 1898 election.⁸⁹ Waddell echoed this message while rebuking Black success in the city on October 24, 1898, exclaiming, “Negro domination shall henceforth be only a shameful memory to us and an everlasting warning to those who shall ever again seek to retrieve it.”⁹⁰ This speech rocketed Waddell’s political standing in Wilmington, and he was asked to give speeches daily.⁹¹

The third prong of the Democrats’ plan to take back the city of Wilmington included on-the-ground action and intimidation.⁹² The Red Shirts were “effectively a terrorist arm of the Democratic party” who wore red uniforms, carried unconcealed weapons, and rode on horseback through Black communities to scare Black voters and pressure the White population to vote for the Democrats.⁹³ Prominent leaders in state politics, including Charles Aycock, took part in the Red Shirts’ campaigns.⁹⁴ The Red Shirts worked to ensure all White men were registered to vote and created White Government Unions to ensure that they voted for Democrats, not Fusionists.⁹⁵ They also challenged what they considered illegal voter registration of certain Black North Carolinians.⁹⁶

⁸⁵ Tyson, *supra* note 45, at 1; *see also* ZUCCHINO, *supra* note 31, at 76.

⁸⁶ Tyson, *supra* note 45, at 1.

⁸⁷ PRATHER, *supra* note 30, at 58–59; ZUCCHINO, *supra* note 31, at 76.

⁸⁸ *See* WILMINGTON REPORT, *supra* note 46, at 65.

⁸⁹ UMFLEET, *supra* note 15, at 40.

⁹⁰ WILMINGTON REPORT, *supra* note 46, at 80.

⁹¹ *See id.* at 81.

⁹² *See id.* at 56.

⁹³ UMFLEET, *supra* note 15, at 42–43.

⁹⁴ *Id.* at 41.

⁹⁵ *See* Tyson, *supra* note 45, at 8.

⁹⁶ *See* WILMINGTON REPORT, *supra* note 46, at 66.

Members of the Red Shirts were not the only people using fear tactics to suppress the vote.⁹⁷ At the time of the election, there were approximately 3,000 guns in the city.⁹⁸ A group of White leaders, dubbed the Secret Nine, readied themselves to protect White citizens and prepared to overthrow the city government, if necessary.⁹⁹ The group created the Vigilante Committee, composed of the Red Shirts and members of the Wilmington Light Infantry (“WLI”) and led by experienced Confederate and Ku Klux Klan member Colonel Rodger Moore.¹⁰⁰ The leader of the WLI, Colonel Walker Taylor, attempted to separate the militia, which had a long history of service to the state, from the Vigilante Committee, but his attempts were in vain.¹⁰¹ On the eve of the election, Wilmington looked “like an armed camp.”¹⁰²

The Democrats were determined to sweep every race in the November 8 election, relying on violence to suppress the Black vote.¹⁰³ Waddell’s speech on November 7th revealed the mood and determination of the Democrats:

You are Anglo-Saxons. You are armed and prepared, and you will do your duty. Be ready at a moment’s notice. Go to the polls tomorrow and if you find the Negro voting, tell him to leave the polls and if he refuses kill, shoot him down in his tracks. We shall win tomorrow if we have to do it with guns.¹⁰⁴

As Black people in Wilmington attempted to arm themselves in defense, White supremacists proclaimed they were adding fuel to the fire, and stores refused to sell guns and ammunition to them.¹⁰⁵

As the election neared, White Government Union club members across the state upped their voter intimidation, suppression, and fraud tactics.¹⁰⁶ After a mass meeting of White Government Unions in Wilmington on November 7, twenty-five members became election observers at each voting place in the city. Democratic leaders instructed the poll observers to challenge any Black man attempting to vote and

⁹⁷ See *infra* notes 98–102.

⁹⁸ WILMINGTON REPORT, *supra* note 46, at 92.

⁹⁹ PRATHER, *supra* note 30, at 49.

¹⁰⁰ WILMINGTON REPORT, *supra* note 46, at 87, 89.

¹⁰¹ See *id.* at 89–90.

¹⁰² UMFLEET, *supra* note 15, at 56.

¹⁰³ See *infra* notes 104–105.

¹⁰⁴ WILMINGTON REPORT, *supra* note 46, at 92.

¹⁰⁵ See UMFLEET, *supra* note 15, at 59–60.

¹⁰⁶ See *infra* notes 107–109.

round up every White man they could find to cast votes for Democrats.¹⁰⁷ After people in the city cast their votes, the poll observers methodically removed Republican votes and stuffed the ballot boxes with false votes for Democrats.¹⁰⁸ Not surprisingly, the Democrats prevailed in the state and county-wide elections, often by overwhelming margins.¹⁰⁹ Yet, the White citizens of Wilmington had reached a breaking point with the Fusionist municipal government.¹¹⁰ Even though members of Wilmington's municipal government were not up for election until the following spring,¹¹¹ the Democrats decided they could not wait until the next election to remove them from office.¹¹²

The next day, on November 9, a notice in the *Wilmington Messenger* called for a meeting of White citizens.¹¹³ There, Waddell published a document called the "White Declaration of Independence," which asserted that White men would no longer live under "Negro rule."¹¹⁴ The group called for Manly's removal and the resignation of the mayor and chief of police.¹¹⁵ A committee of twenty-five men was formed to carry the Declaration into effect.¹¹⁶ The Committee of Twenty-Five, led by Waddell, summoned the Committee of Colored Citizens (CCC), thirty-two men who were Black leaders, to hear and respond to their demands.¹¹⁷ Waddell treated this meeting as an ultimatum, and the CCC indicated they would advise Manly to leave Wilmington.¹¹⁸ The CCC drafted a short, accommodating reply that did not address the issue of resignations and tasked Armond Scott with the responsibility of delivering the response to Waddell's home.¹¹⁹ Scott opted to mail the response after encountering numerous groups of hostile White men, and the CCC made the response

¹⁰⁷ ZUCCHINO, *supra* note 31, at 160.

¹⁰⁸ *Id.* at 160–61.

¹⁰⁹ *See id.* at 174–75.

¹¹⁰ *See infra* notes 111–12.

¹¹¹ WILMINGTON REPORT, *supra* note 46, at 117.

¹¹² *See* ZUCCHINO, *supra* note 31, at 177–79.

¹¹³ *Id.* at 175–76.

¹¹⁴ Tyson, *supra* note 45, at 11.

¹¹⁵ ZUCCHINO, *supra* note 31, at 177–78.

¹¹⁶ UMFLEET, *supra* note 15, at 75.

¹¹⁷ ZUCCHINO, *supra* note 31, at 180.

¹¹⁸ UMFLEET, *supra* note 15, at 76–77.

¹¹⁹ PRATHER, *supra* note 30, at 111.

available for the public.¹²⁰ As the day ended, the CCC felt cautiously optimistic that peace would prevail.¹²¹

The CCC was unaware that, under the cover of night, more White men had assembled in front of the offices of the *Daily Record* to destroy the offices and lynch Manly if the demands of the White Declaration were not met.¹²² This violent mob would soon erupt and fuel a deadly coup d'état¹²³ that would forever change the lives of everyone in Wilmington and across the Southern United States.

*D. Death and Destruction Inflicted on Black Communities on
November 10, 1898*

Election Day, November 8, 1898, was relatively peaceful, despite the rampant voter intimidation and fraud that secured the election for the Democratic Party.¹²⁴ However, the Democrats were not satisfied with this political victory; they were determined to drive Black people out of Wilmington, especially those who were leaders in the Black community.¹²⁵ On November 10, 1898, Waddell joined the mob in the morning and lied about not receiving the CCC response.¹²⁶ He called for seventy-five men to march, but over 500 answered the call, and he assembled the White supremacists and marched towards the *Daily Record* building.¹²⁷ The group set the building on fire, and the fire chief halted the all-Black fire crew until the building was entirely destroyed, even though Manly had already escaped.¹²⁸ After the building burned down, the White supremacist mob that Democratic leaders built throughout the election was no longer under their direct control, and the city descended into a complete state of panic and destruction.¹²⁹

The bloodshed began after armed White men entered into the predominantly Black neighborhood, Brooklyn, and the waterfront industrial yards where Black workers staffed the cotton compress, the

¹²⁰ ZUCCHINO, *supra* note 31, at 185; *see also* CECELSKI & TYSON, *supra* note 49, at 38.

¹²¹ UMFLEET, *supra* note 15, at 78.

¹²² ZUCCHINO, *supra* note 31, at 185.

¹²³ *See* WILMINGTON REPORT, *supra* note 46, at 152–55.

¹²⁴ *Id.* at 107–08.

¹²⁵ *Id.* at 114.

¹²⁶ *Id.* at 124.

¹²⁷ PRATHER, *supra* note 30, at 112.

¹²⁸ ZUCCHINO, *supra* note 31, at 194–95.

¹²⁹ UMFLEET, *supra* note 15, at 86.

city's largest employer.¹³⁰ White men, excited by the incineration of the *Daily Record* office, began to fire into the homes and businesses of Black residents.¹³¹ In Brooklyn, a group of Black men gathered to protect their neighborhood, and a shootout ensued at the intersection of Fourth and Harnett.¹³² As the bloodshed continued, Republican Governor Russell instructed Colonel Taylor, the leader of the WLI, to "keep the peace."¹³³ The Secret Nine had Colonel Moore, leader of the Vigilance Committee, sound the riot alarm and brought in the WLI.¹³⁴ The machine gun squads of the WLI, armed with their new Gatling gun, began shooting recklessly in Brooklyn and killed as many as twenty-five Black men, who they claimed were shooting at Whites.¹³⁵ Shooting erupted throughout the northern sections of the city as White supremacists shot, hanged, and dragged Black men for "sass" and refusing to stop for the armed patrol.¹³⁶ Some of the shootings were premeditated, including one Black policeman named Perkins; Red Shirts waited four days prior to the massacre for an excuse to shoot him.¹³⁷ Thousands of Black women and children fled their home for the outskirts of town, hiding in cemeteries and swamps.¹³⁸

As the city streets were destroyed and Black men and women fled to safety amid a deadly massacre, the Democrats in Wilmington moved forward with a coup d'état to take over the city government.¹³⁹ Members of the Committee of Twenty-Five, led by George Rountree, used armed intimidation to force the resignation of the mayor, police chief, and Board of Aldermen.¹⁴⁰ While none of the politicians left their posts willingly, Rountree made it clear that he could not ensure their safety if they stayed.¹⁴¹ Waddell was then unanimously chosen to be the Mayor of

¹³⁰ WILMINGTON REPORT, *supra* note 46, at 133; *see also* ZUCCHINO, *supra* note 31, at 195–96 (detailing the Sprunt Cotton Compress).

¹³¹ UMFLEET, *supra* note 15, at 88.

¹³² *See id.* at 88–90; *see also* CECELSKI & TYSON, *supra* note 49, at 40. Four Men were reported dead at this intersection: John Townsend, Charles Lindsey (also known as Silas Brown), William Mouzon, and John Gregory. WILMINGTON REPORT, *supra* note 46, at 136.

¹³³ WILMINGTON REPORT, *supra* note 46, at 124.

¹³⁴ UMFLEET, *supra* note 15, at 92.

¹³⁵ *Id.* at 96–98; *see also* PRATHER, *supra* note 30, at 122.

¹³⁶ UMFLEET, *supra* note 15, at 100; *see also* CECELSKI & TYSON, *supra* note 49, at 42–43.

¹³⁷ UMFLEET, *supra* note 15, at 101.

¹³⁸ Tyson, *supra* note 45, at 11; *see also* UMFLEET, *supra* note 15, at 101.

¹³⁹ Tyson, *supra* note 45, at 11.

¹⁴⁰ *Id.*

¹⁴¹ UMFLEET, *supra* note 15, at 104.

Wilmington.¹⁴² One of his first decisions was to create a list of Black men and White sympathizers for banishment from the city.¹⁴³ Waddell and the White supremacist conspirators used the WLI to find and arrest the men slated for banishment, which included fourteen of the most successful Black leaders and businessmen in the city.¹⁴⁴ Their banishment forever altered the tapestry of the Black community in the town.¹⁴⁵

People debate the number of lives lost to White supremacy on this fateful day. While the exact number remains unknown, the magnitude of loss can be felt throughout Wilmington and beyond. Death counts range anywhere from 20 to 300, as White supremacists stole the lives and livelihoods of Black people across the city.¹⁴⁶

E. Complicity of the State and Federal government

The North Carolina State and United States Federal Government bear responsibility for their inaction in the months leading up to the massacre. Their complicity enabled the expulsion and death of untold numbers of Wilmington's Black community. President McKinley and Governor Russell, both elected in large part due to Black voters, were repeatedly made aware of the threats of racial violence and voter suppression throughout the 1898 campaign.¹⁴⁷ Yet, they turned their backs on the Black people who were victimized in Wilmington. In response to the White supremacist speeches and articles of Aycock and Waddell, Black Congressmen George H. White met periodically with President McKinley to warn him about the "unholy war Democrats are making on the color line" in Wilmington and requested federal help.¹⁴⁸ North Carolina Senator Jeter Pritchard similarly wrote to President McKinley to ask for U.S. Marshalls to preserve the peace in the city.¹⁴⁹ President McKinley handed the matter over to his Attorney General, John W.

¹⁴² *Id.*

¹⁴³ *See id.*

¹⁴⁴ *See* WILMINGTON REPORT, *supra* note 46, at 159. These men included Rev. Allen, leader of the Central Baptist Church, and Thomas Miller, a wealthy real estate broker, among many others. *Id.* at 168, 245.

¹⁴⁵ *See* UMFLEET, *supra* note 15, at 114.

¹⁴⁶ Tyson, *supra* note 45, at 10.

¹⁴⁷ *See* UMFLEET, *supra* note 15, at 44.

¹⁴⁸ *Id.*

¹⁴⁹ PRATHER, *supra* note 30, at 85.

Griggs, who claimed, if it was necessary to preserve order, he would deploy federal troops.¹⁵⁰

On the day of the massacre, President McKinley received multiple communications about its severity.¹⁵¹ He met with his staff to discuss sending federal troops but decided against it, blaming Governor Russell, who made no request for assistance.¹⁵² In a press conference at the end of the day on November 10, Secretary of War Russell Alger called the riot a “disgrace” to North Carolina and further blamed Governor Russell for the lack of federal assistance.¹⁵³ For days after the massacre, Black residents of Wilmington wrote to the President begging for governmental help; one letter asked, “are we to die like rats in a trap.”¹⁵⁴ On November 12, after meeting with his Cabinet, President McKinley decided it was too late to interfere, as Black people continued to hide in cemeteries and swamps, fearing for their lives.¹⁵⁵

President McKinley shifted the responsibility onto Governor Russell, a Red Shirt target throughout the campaign.¹⁵⁶ Governor Russell employed armed bodyguards throughout the campaign, even in the Governor’s mansion.¹⁵⁷ Governor Russell’s attempts to defuse tensions throughout the campaign came at the expense of Black people, as he encouraged Black politicians not to run for office.¹⁵⁸ On November 8, after he travelled to Wilmington to cast his ballot, Red Shirts halted his train back to Raleigh.¹⁵⁹ The railroad officials were able to save his life by moving him into a baggage car.¹⁶⁰ Instead of using his governmental powers to protect the Black residents of Wilmington like he protected himself, Governor Russell entrusted White supremacist Colonel Taylor to handle the events.¹⁶¹ The Federal and State government were actively

¹⁵⁰ UMFLEET, *supra* note 15, at 44.

¹⁵¹ See PRATHER, *supra* note 30, at 151.

¹⁵² *Id.* at 152.

¹⁵³ UMFLEET, *supra* note 15, at 130.

¹⁵⁴ WILMINGTON REPORT, *supra* note 46, at 196.

¹⁵⁵ UMFLEET, *supra* note 15, at 131.

¹⁵⁶ See WILMINGTON REPORT, *supra* note 46, at 70.

¹⁵⁷ *Id.*

¹⁵⁸ See UMFLEET, *supra* note 15, at 68.

¹⁵⁹ Tyson, *supra* note 45, at 9.

¹⁶⁰ *Id.*

¹⁶¹ Caleb Crain, *What a White Supremacist Coup Looks Like*, NEW YORKER (Apr. 20, 2020), <https://www.newyorker.com/magazine/2020/04/27/what-a-white-supremacist-coup-looks-like>.

aware of the potential violence and constantly placed the responsibility for peace on someone else.

As Black leaders across the country called for Federal action in response to the massacre, Attorney General Griggs decided it was necessary to launch an investigation.¹⁶² Attorney General Griggs called on Claude Bernard, U.S. Attorney for the Eastern District of North Carolina, to investigate the murders, voter suppression, and banishment of Republican leaders.¹⁶³ Griggs gave the case to his assistant, James E. Boyd, who had been arrested thirty years prior due to his involvement with the Ku Klux Klan.¹⁶⁴ Griggs and Boyd decided against calling a grand jury.¹⁶⁵ Bernard attempted to convene a grand jury but ended up discharging the group without hearing any testimony.¹⁶⁶ Bernard wanted to send undercover agents into the White Wilmington community, yet the Attorney General pressured him to drop the case.¹⁶⁷ Oliver Dockery, a Republican who lost his election to represent Wilmington in Congress on November 8, attempted to challenge the validity of the election due to the clear voter suppression tactics of the Democrats.¹⁶⁸ He struggled to put a case together, as many Republican witnesses would not speak about Red Shirt intimidation, as they feared for their own lives.¹⁶⁹ Dockery's case was ultimately dismissed by the House.¹⁷⁰

The inaction by the Federal and State government enabled the massacre and the coup, and undermined the entire American system of law and government. Lack of reparations and acknowledgement at the federal and state level, for more than a hundred years, sent a clear message of continued White supremacy throughout the government.

¹⁶² UMFLEET, *supra* note 15, at 131.

¹⁶³ *Id.*; see also CECELSKI & TYSON, *supra* note 49, at 86–87.

¹⁶⁴ WILMINGTON REPORT, *supra* note 46, at 199.

¹⁶⁵ UMFLEET, *supra* note 15, at 132.

¹⁶⁶ *Id.*

¹⁶⁷ See PRATHER, *supra* note 30, at 153–54.

¹⁶⁸ Oliver H. Dockery, *Contested Election Case of Oliver H. Dockery vs. John D. Bellamy, from the Sixth Congressional District of the State of North Carolina*, N.C. DIGIT. COLLECTIONS (1899), <https://digital.ncdcr.gov/digital/collection/p249901coll37/id/2718>.

¹⁶⁹ UMFLEET, *supra* note 15, at 132.

¹⁷⁰ *Id.*

F. *The Coverup and Whitewashing of Wilmington's History*

As Black people in Wilmington mourned and began to search for answers in the chaos, White Democrats began a coverup campaign full of lies rooted in White supremacy.¹⁷¹ The Democrats planned a celebration of their election success across the state, including the coup, to take place in the state capital, Raleigh, on November 15.¹⁷² On November 26, 1898, Mayor Waddell wrote an article claiming that White citizens had participated in a revolution to save their city from lawlessness.¹⁷³ This White supremacist lie became the dominant narrative, as the coup government pressured prominent White Republicans to dispute the claims of Black city, state, and national leaders.¹⁷⁴ The coup government and White supremacists in the city simultaneously refuted claims they engaged in violence while sending clear messages to those banished they would not be safe if they returned.¹⁷⁵ When one banished Black man, Ari Bryant, returned to his home in Wilmington in June 1899, White men armed with whips surrounded his house; if he had not escaped, they likely would have killed him.¹⁷⁶ One article in the *Wilmington Messenger* warned Black people that “the 10th of November will prove to have been child’s play to what the consequences will be to the negroes if insolent lawlessness should arise.”¹⁷⁷ Through the destruction of the *Daily Record*, the only Black press in the state, and the banishment of its editorial staff, White supremacists had an unchecked press and ample opportunity to spread their racist propaganda.¹⁷⁸

While some White supremacists employed the press to control the narrative of the massacre, others utilized legislation.¹⁷⁹ When the North

¹⁷¹ See Tyson, *supra* note 45, at 11.

¹⁷² *Id.* at 12.

¹⁷³ Alfred M. Waddell, *The Story of the Wilmington, North Carolina, Race Riots*, NEWS & OBSERVER (Nov. 27, 1898), <https://cwnc.omeka.chass.ncsu.edu/exhibits/show/journalisticcoverage/item/771>.

¹⁷⁴ UMFLEET, *supra* note 15, at 136.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*; see also WILMINGTON REPORT, *supra* note 46, at 292.

¹⁷⁷ UMFLEET, *supra* note 15, at 136.

¹⁷⁸ Nov. 10, 1898: *Wilmington Massacre*, ZINN EDUC. PROJECT, <https://www.zinnedproject.org/news/tdih/wilmington-massacre-2/> (last visited Aug. 7, 2021); *Wilmington Daily Record and the Wilmington Journal*, AFR. AM. HERITAGE FOUND. SE. N.C., http://www.aahfwilmington.org/aahmw_virtualexhibits_placemaking_4daily.html (last visited Aug. 7, 2021).

¹⁷⁹ Nov. 10, 1898: *Wilmington Massacre*, *supra* note 178.

Carolina General Assembly met in January 1899, its main goal was to codify White supremacy into law.¹⁸⁰ Newly elected assemblyman George Rountree helped craft a new charter for Wilmington, which cemented the coup government.¹⁸¹ The North Carolina State Legislature began passing Jim Crow laws, including mandatory segregation of public facilities.¹⁸² Rountree, after gaining notoriety across the state for his role in the coup, drafted an amendment to use literacy tests and a poll tax to prevent Black North Carolinians from voting.¹⁸³ He also pioneered use of the grandfather clause to codify White supremacy at the ballot box and inspired legislatures across the South to do the same, stripping Black people of the right to vote for decades.¹⁸⁴ In the 1900 election season, these racist amendments were approved as Red Shirts continued their intimidation tactics to prevent Black voter registration and turnout.¹⁸⁵ In 1868, after the passage of the Fourteenth Amendment, almost 80,000 Black men in North Carolina registered to vote.¹⁸⁶ By 1900, White supremacist legal and extralegal intimidation tactics brought this number down to only 15,000.¹⁸⁷

Charles Aycock relied on the same White supremacist speeches that he gave in 1898 in his own gubernatorial campaign in 1900.¹⁸⁸ His supporters brought one of the guns used in the massacre along the campaign trail as a symbol of White supremacy.¹⁸⁹ Aycock performed exceptionally well in New Hanover County after the coup and continued voter intimidation.¹⁹⁰ The year 1900 marked the first time the county voted for a Democratic gubernatorial candidate since the Civil War, and the county aided the election of the very man who helped incite the massacre and coup.¹⁹¹

¹⁸⁰ ZUCCHINO, *supra* note 31, at 311.

¹⁸¹ UMFLEET, *supra* note 15, at 137.

¹⁸² *Id.*

¹⁸³ ZUCCHINO, *supra* note 31, at 302.

¹⁸⁴ *Id.* at 303.

¹⁸⁵ UMFLEET, *supra* note 15, at 138.

¹⁸⁶ ZUCCHINO, *supra* note 31, at 315.

¹⁸⁷ *Id.*

¹⁸⁸ UMFLEET, *supra* note 15, at 139.

¹⁸⁹ ZUCCHINO, *supra* note 31, at 313.

¹⁹⁰ UMFLEET, *supra* note 15, at 139.

¹⁹¹ JANET F. DAVIDSON, THE 1898 WHITE SUPREMACIST CAMPAIGN AND MASSACRE, A BRIEF NARRATIVE 5 (2020), <https://www.capefarmuseum.com/wp-content/uploads/2020/05/1898-narrative-with-images.pdf>.

The main instigators of the coup and massacre all went on to have successful political careers: Waddell served as the mayor of Wilmington until 1906;¹⁹² Aycock was the governor of North Carolina until 1905 and was poised to become Senator before his death;¹⁹³ Rountree served in the General Assembly;¹⁹⁴ Daniels was appointed the Secretary of the Navy;¹⁹⁵ and Simmons served as a United States Senator from 1901 to 1931.¹⁹⁶ The White supremacist legislation enacted in the wake of the Wilmington Coup and massacre secured complete Democratic control in the state with not a single statewide Republican candidate taking office for seventy years.¹⁹⁷

The White supremacists who led the coup used their powerful positions to rewrite the collective memory of the event, often opting to simply ignore any conversations of November 10.¹⁹⁸ A 1902 Chamber of Commerce Pamphlet, designed to bring capital to the city, did not mention the events of 1898.¹⁹⁹ In 1916, an amateur historian, James Sprunt, wrote *Chronicles of the Cape Fear River*, a history of the region still referenced by historians today.²⁰⁰ In regards to the Wilmington massacre, he stated that:

it was only under stern necessity that the action of white people was taken . . . when we consider the peaceable and amicable relations that have since existed, the good government established and maintained, and the prosperous, happy conditions that have marked the succeeding years, we realize that the results of the Revolution of 1898 have indeed been a blessing to the community.²⁰¹

¹⁹² Kent McCoury, *Alfred Moore Waddell (1834-1912)*, N.C. HIST. PROJECT (2016), <https://northcarolinahistory.org/encyclopedia/alfred-moore-waddell-1834-1912/>.

¹⁹³ Oliver H. Orr, Jr., *Aycock, Charles Brantley*, DICTIONARY N.C. BIOGRAPHY (1979), <https://www.ncpedia.org/biography/aycock-charles-brantley>.

¹⁹⁴ Albert W. Cowper, *Rountree, George*, DICTIONARY N.C. BIOGRAPHY (1994), <https://www.ncpedia.org/biography/rountree-george>.

¹⁹⁵ Richard L. Watson, *Daniels, Josephus*, DICTIONARY N.C. BIOGRAPHY (1986), <https://www.ncpedia.org/biography/daniels-josephus-dncb>.

¹⁹⁶ *Simmons, Furnifold McLendel*, HIST., ART & ARCHIVES, <https://history.house.gov/People/Detail/21654?ret=True> (last visited Aug. 9, 2021).

¹⁹⁷ Tyson, *supra* note 45, at 12–13; see RONNIE W. FAULKNER, HISTORY OF THE NORTH CAROLINA REPUBLICAN PARTY 9, 17 (2017), https://d3n8a8pro7vhmx.cloudfront.net/ncgop/pages/44/attachments/original/1519061290/Hist_ory_of_NCGOP.pdf.

¹⁹⁸ See, e.g., Tyson, *supra* note 45, at 16.

¹⁹⁹ UMFLEET, *supra* note 15, at 167.

²⁰⁰ Dorothy Fremont Grant, *Sprunt, James*, DICTIONARY N.C. BIOGRAPHY (1994), <https://www.ncpedia.org/biography/sprunt-james>.

²⁰¹ UMFLEET, *supra* note 15, at 168.

This White supremacist narrative became the standard explanation for the events on November 10.²⁰² They were included in all of the state histories for the following decades and shaped the way people in and outside of the state talked about the massacre (if they thought about it at all).²⁰³ The Black press was effectively destroyed when the Red Shirts torched the *Daily Record* on November 10, 1898, thereby eliminating any viable counter-narrative to the continued White supremacy propaganda campaign.²⁰⁴

G. Lingerin Effects

Mr. Kenneth L. Davis, a well-known community activist in Wilmington and a member of the Wilmington Race Riot Commission, made the following observations regarding the far-reaching impact of the “injustices of 1898”:

The injustices of 1898 were more than an attack on unnamed Negroes, the silencing of the Black press, and the removal of an allegedly corrupt city government; it was an attack on the . . . fabric that binds this nation together. We must remove this diabolical stain of racism from the fabric of freedom and democracy that still exist in Wilmington today. It exists in the gentrification of Black communities, it exists in the attempt to resegregate schools, it exists in hiring and promotions practices in the public and private sector and it exists in the distorted historical facts of the events of 1898.²⁰⁵

²⁰² *Id.*

²⁰³ The textbook used in North Carolina classrooms in the 1930s, *The Story of North Carolina*, asserted that the Black people who held office in Wilmington were incompetent, which caused the revolution. Tyson, *supra* note 45, at 16. Forty years later, in the 1970s, the textbook, *North Carolina: The Story of a Special Kind of Place*, insinuates that Black people in Wilmington started a riot. *Id.*

²⁰⁴ Even though the *Daily Record* was published as a daily paper for years in Wilmington, only seven copies survive today. UMFLEET, *supra* note 15, at 65; *The Daily Record (Wilmington, N.C.)*, DIGITALNC, <https://www.digitalnc.org/newspapers/the-daily-record-wilmington-n-c/> (last visited Jan. 5, 2022). The Third Person Project is a non-profit organization that has spearheaded the *Daily Record* Project, using “digital means, to undo an act of historical erasure,” attempting to reclaim scattered fragments of the *Daily Record* from obscurity. ABOUT, THIRD PERSON PROJECT, <https://www.thirdpersonproject.org/about> (last visited Jan. 6, 2022). Volunteers, including Wilmington middle school students, have collected quoted content from the *Daily Record* found in periodicals and other media of the era, which they have republished in a “Remnants” edition of the newspaper. See *The Daily Record: Remnants Issue*, DIGITALNC, <https://lib.digitalnc.org/record/107419> (last visited Jan. 6, 2022).

²⁰⁵ WILMINGTON REPORT, *supra* note 46, at 10 (Remarks by Commissioners). Mr. Davis died in 2018. See

Before the massacre of 1898, Wilmington, North Carolina, served as an example of socioeconomic mobility for Black Americans and a place of possibility for a country with blood on its hands.²⁰⁶ After the massacre and coup, that progress was halted and reversed, plummeting the city into the depths of White supremacy.²⁰⁷ The effects of the massacre and the “diabolical stain of racism” have painted the city ever since.²⁰⁸

After the massacre, Black Americans underwent a mass exodus in search of safer locales, a decade before the Great Migration.²⁰⁹ Most of the Black Americans who left Wilmington were laborers, cooks, washers, porters, and nurses.²¹⁰ In 1890, Wilmington was home to 11,324 Black people and 8,731 White people, compared to 10,407 Black people and 10,566 White people by 1900.²¹¹ Among the people banished, killed, and forced to relocate after losing their homes or sense of safety in the massacre, Wilmington lost Black leaders at every class level.²¹² This purge had detrimental effects on the city and its Black population. Some of these leaders, including Alex Manly and John Norwood, were already state leaders and were poised to become national changemakers when their lives were upended by the coup.²¹³

While Wilmington before 1898 served as a beacon of hope for Black economic opportunity, White supremacists used the massacre and coup to severely limit the opportunity of Black people in the city. The White Declaration of Independence, issued at the mass meeting of Whites held one day before the massacre, resolved in part to “give to white men a large

Frances Weller, *Community Activist, Former Chair of Wilmington Commission on African American Affairs Dies*,

WECT NEWS 6 (Dec. 6, 2018, 12:00 AM), <https://www.wect.com/2018/12/07/community-activist-former-chair-wilmington-commission-african-american-affairs-dies/>; *Editorial, Our View: Wilmington Loses Two Passionate Voices of Reason*, STARNEWS ONLINE (Dec. 6, 2018, 2:01 AM), <https://www.starnewsonline.com/opinion/20181206/editorial-our-view-wilmington-loses-two-passionate-voices-of-reason>.

²⁰⁶ See UMFLEET, *supra* note 15, at 157–58.

²⁰⁷ See *id.*

²⁰⁸ WILMINGTON REPORT, *supra* note 46 (Remarks by Commissioners).

²⁰⁹ *Id.* at 233. See generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* (2010).

²¹⁰ UMFLEET, *supra* note 15, at 152.

²¹¹ WILMINGTON REPORT, *supra* note 46, at 235.

²¹² See UMFLEET, *supra* note 15, at 114.

²¹³ Daniel R. Miller, *Manly, Alex*, *DICTIONARY N.C. BIOGRAPHY* (1991), <https://www.ncpedia.org/biography/manly-alex-1>; WILMINGTON REPORT, *supra* note 46, at 44, 242.

part of the employment heretofore given to Negroes.”²¹⁴ One of the first official acts of the Board of Aldermen installed by the coup was to fire Black public servants, including all of the Black police officers and firefighters.²¹⁵ In the days following the coup, more than sixty jobs requiring unskilled or semiskilled labor changed hands: Black workers were fired and White men hired in their place.²¹⁶ These discriminatory hiring practices raised the unemployment rate²¹⁷ and lowered wages²¹⁸ for Black workers. Due to changing economic conditions, Black-owned property lost value.²¹⁹ The coup, and the Jim Crow legislation that it enabled, also decreased home ownership amongst Black people in Wilmington.²²⁰ In 1880, the average social economic index score (“SEI”) was higher for Black Americans in the city of Wilmington compared to the rest of the state.²²¹ However, by 1900 and 1910, the opposite was true, as SEI scores fell for Black Americans living in Wilmington.²²² This decline was likely driven by “the stated commitment of the white

²¹⁴ ZUCCHINO, *supra* note 31, at 275. The Declaration also averred that “the giving of nearly all the employment to negro laborers has been against the best interests of this County and City” UMFLEET, *supra* note 15, at 77.

²¹⁵ ZUCCHINO, *supra* note 31, at 276. See Cape Fear Historian Blog, *After 1898 . . .* (June 19, 2020), <https://capefearhistorian.blogspot.com/2020/06/after-1898.html> (telling the story of Alexander and Polly Avant Rhone, a Black Wilmington firefighter and his wife, and their life in Brooklyn, New York after leaving Wilmington).

²¹⁶ ZUCCHINO, *supra* note 31, at 277.

²¹⁷ In 1897, 3,462 out of the 3,760 Black adults living in Wilmington were employed (92%); 2,990 of 3,913 of White adults were employed (76%). UMFLEET, *supra* note 15, at 149. By 1900, Black employment plummeted to 2,546 out of 3,575 (71%), as the White labor movement solidified its power. *Id.* at 144, 149.

²¹⁸ In 1897, the year before the coup, the average monthly salary of a White New Hanover County teacher was \$36.23 compared to \$35.23 for a Black teacher, but, by 1905, a White teacher averaged \$42.70, compared to \$35.00 for a Black teacher. *Id.* at 144; see also *id.* at 157–58 (citing study which concluded that “the impact of being Black in Wilmington negatively affected wage-earning abilities.”).

²¹⁹ For example, in 1897, John Norwood’s property was valued at \$3,000, while, in 1900, it was valued at \$2,700. WILMINGTON REPORT, *supra* note 46, at 244.

²²⁰ In 1900, 35% of Black people in Wilmington owned or mortgaged a home compared to 50% of White people.

Ten years later, Black home ownership had decreased to 27%, as White home ownership increased to 55%. *Id.* at 241.

²²¹ UMFLEET, *supra* note 15, at 156–57; see also *id.* at 156 (explaining the calculation of SEI scores).

²²² WILMINGTON REPORT, *supra* note 46, at 156, 158. SEI scores for Black people in Wilmington increased in 1920, probably reflecting economic opportunities brought about by World War I. *Id.*

supremacy campaign to favor white workers over black in the realm of hiring and the exodus from the city of many skilled workers who sought employment elsewhere.”²²³

Along with devastating economic discrimination and loss, post-coup Wilmington brought major social changes to the Black community of Wilmington. The White supremacist attack on the Black people of Wilmington went beyond murder, physical assaults, and destruction of property. The perpetrators of the coup also sought to eliminate or suppress key aspects of Black culture, thereby ripping apart the social fabric of the Black community.²²⁴ In the month after the massacre, the Board of Aldermen banned the wearing of masks or disguises to make the holiday tradition of Jonkonnu illegal.²²⁵ Jonkonnu dated to slavery when Black people would put on costumes to walk, dance, and celebrate through White neighborhoods and receive treats.²²⁶ The tradition’s prevalence in Wilmington at the turn of the century reflects the success and power of the Black community there before the coup, as the tradition had faded in many surrounding areas. White people in the city then appropriated the celebration, which they called “cooning.”²²⁷ Through legislation and intimidation, the White supremacists attempted to squash all celebrations of Black people in the city, but the Black community persevered through strong, organized church networks and fraternal and social groups, like the African American Masonic Order.²²⁸ Even as the massacre and coup hurt St. Stephen’s AME, St. Mark’s Episcopal, and Christ’s Congregational economically, they remained pillars of strength in the community.²²⁹

As the Black community in Wilmington worked to mourn and rebuild their lives under a White supremacist coup government, they faced what a prominent Black leader, Bertha Todd, later called the “1898 mentality,” characterized by reticence, caution, and fear.²³⁰ White supremacists in the city worked successfully to preserve this mentality through the Jim Crow Era and the majority of the twentieth century. In

²²³ *Id.* at 156.

²²⁴ See *infra* notes 274–75 and accompanying text (discussing the destruction of cultural institutions as a tool of ethnic cleansing).

²²⁵ WILMINGTON REPORT, *supra* note 46, at 164.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 165.

²³⁰ KENNETH ROBERT JANKEN, THE WILMINGTON TEN: VIOLENCE, INJUSTICE, AND THE RISE OF BLACK POLITICS IN THE 1970s 5 (2015).

1971, Black students fought back against the 1898 mentality and boycotted the newly integrated high schools to protest systemic mistreatment by school officials, the police, and White adults who would harass them on and off school grounds.²³¹ This boycott turned violent after the Rights of White People (“ROWP”) organization attacked the church where the students were headquartered.²³² After continued drive-by shootings at the church and unanswered calls for help from law enforcement, the Black students created a group of armed guards around the church.²³³ As violence continued, unknown people burned some local White-owned businesses, including Mike’s Grocery Store.²³⁴

These events would ultimately lead to the infamous case of the Wilmington Ten: Nine young men and one woman were sentenced to a combined 282 years in prison in 1971 for setting fire to Mike’s Grocery Store and conspiring to shoot at first responders to the fire.²³⁵ Their sentencing served as a larger part of the backlash to the civil rights movement and attempts to preserve the 1898 mentality amongst Black people in the city.²³⁶ The prosecutors produced witnesses who later recanted their testimonies, while the judge limited the defense attorneys and allowed for almost no Black jurors.²³⁷ In 1980, after international and grassroots pressure, the U.S Circuit Court of Appeals overturned their convictions, citing clear judicial and prosecutorial misconduct.²³⁸

The Wilmington Ten followed the same cycle of the massacre of 1898, with White supremacists within and outside of the government using the legal system and extralegal actions to counter racial progress and

²³¹ *Id.* at 1.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Ben Steelman, *Who Were the Wilmington 10, and Where Are They Now?*, MYREPORTER.COM (Jan. 2, 2013), <http://www.myreporter.com/2009/08/who-were-the-wilmington-10-and-where-are-they-now/>. The members of the Wilmington Ten were Ben Chavis, Reginald Epps, Jerry Jacobs, James McKoy, Wayne Moore, Marvin Patrick, Connie Tindall, Willie Vereen, William (“Joe”) Wright, and Ann Shepard. Joe Wright, who died in 1990, was the brother of House Representative Thomas E. Wright. *Id.*

²³⁶ See *The Wilmington Ten*, ANCHOR, <https://www.ncpedia.org/anchor/wilmington-ten> (last visited Aug. 9, 2021).

²³⁷ JANKEN, *supra* note 230, at 2; Steelman, *supra* note 235.

²³⁸ JANKEN, *supra* note 230, at 2.

maintain hegemonic White dominance.²³⁹ As Kenneth Davis observed in the 1898 Wilmington Race Riot Report, the “diabolical stain of racism” remains on the fabric of freedom and democracy in Wilmington today.²⁴⁰ Wilmington, the State of North Carolina, and the nation cannot remove this stain without understanding and repairing the injustices of the 1898 Massacre and Coup.

III. PUTTING WILMINGTON IN CONTEXT

To understand and repair the damage inflicted by the Wilmington Massacre and Coup, it is necessary to comprehend the context in which it occurred. What happened in Wilmington in 1898 was, in many ways, not unique. During this era, Black communities across the United States, especially in the South, were repeatedly destroyed, especially when White people became enraged by Black success.²⁴¹ These attacks were crimes (which were rarely prosecuted), but they were more than just criminal acts. The Wilmington Massacre and Coup, like many of the atrocities described below, can best be understood as an ethnic cleansing. White elites and their followers sought to drive Black Americans out of Wilmington, especially those who were perceived as a threat. Restorative justice, including both individual and communal reparation, provides the best path forward to heal the wounds caused by these acts of domestic terrorism.

A. The Wilmington Massacre and Coup Was Just One Example of Domestic Terrorism Against Black Communities

The violent coup that rocked Wilmington in 1898 was not an isolated incident.²⁴² White mobs frequently responded to success on the part of

²³⁹ See Rachel Lewis Hilburn, *Case of the Wilmington Ten Gives Rise to New Black Political Landscape*, WHQR PUB. MEDIA (Feb. 4, 2021, 4:08 PM), <https://www.whqr.org/local/2021-02-04/case-of-the-wilmington-ten-gives-rise-to-new-black-political-landscape>.

²⁴⁰ WILMINGTON REPORT, *supra* note 46, at 10.

²⁴¹ See Eugene Robinson, *It Was Much More than Tulsa*, WASH. POST (May 31, 2021, 3:43 PM), <https://www.washingtonpost.com/opinions/2021/05/31/it-was-much-more-than-tulsa/>.

²⁴² See, e.g., *id.*; Gillian Brockell, *Tulsa Isn't the Only Race Massacre You Were Never Taught in School. Here Are Others.*, WASH. POST (June 1, 2021, 3:42 PM), <https://www.washingtonpost.com/history/2021/06/01/tulsa-race-massacres-silence-schools/> (describing various instances of organized White violence against Black Americans); Jennifer Rae Taylor, *A History of Tolerance for Violence Has Laid the Groundwork for Injustice Today*, AM. BAR ASS'N (May 16, 2019), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-

Black citizens recently released from chattel slavery and the political party that represented them, the Republicans (or the Fusionists), with violence and intimidation.²⁴³ These attacks typically aimed to eliminate 1) political power held by Blacks and their allies, and 2) economic progress, especially if Black prosperity was perceived as a competitive threat to local Whites.²⁴⁴ The flames that consumed Black political and economic achievements during this era were frequently lit—often, as in Wilmington, in a premeditated and deliberate fashion—by the specter of sex between Black men and White women.

Like the Wilmington Massacre and Coup of 1898, much of the early violence directed at Black Americans centered around the battle for political power in the South after the Civil War. Just two days before the coup in Wilmington, attempts to register Black voters in Phoenix, South Carolina, led to a “mass murder” in which White Republicans were “exiled” and Black people were lynched.²⁴⁵ About 25 years earlier, the “bloodiest single instance of racial carnage in the Reconstruction era” occurred in Colfax, Louisiana, on Easter Sunday, 1873, when White men armed with rifles and a small cannon attacked Black men attempting to defend the county seat after a contested election, resulting in the deaths of 50 to 80 Black men.²⁴⁶ Twenty-two years after the coup in Wilmington, a White mob burned buildings and killed Black people in Ocoee, Florida, reacting to their attempts to register and vote on Election Day, 1920. Even though the events on Ocoee have been described as “the worst election day violence in U.S. history,” resulting in an indeterminate number of deaths, this instance of racialized violence remains unknown to many current-day residents of the city.²⁴⁷ Just as in Wilmington, the leader of the White mob

to-the-future/tolerance-for-violence/ (describing numerous lynchings of Black people during this era).

²⁴³ See WILLIAM A. DARITY, JR. & A. KIRSTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY 215 (2020) (“Political intimidation, economic exclusion, and the erasure of communities where blacks had attained some measure of affluence were the customary aims of a wave of massacres conducted by whites from the 1870s well into the 1940s.”).

²⁴⁴ See *infra* notes 245–62 and accompanying text.

²⁴⁵ DARITY & MULLEN, *supra* note 243, at 216.

²⁴⁶ ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877, at 437 (1988). See generally CHARLES LANE, THE DAY FREEDOM DIED: THE COLFAX MASSACRE, THE SUPREME COURT, AND THE BETRAYAL OF RECONSTRUCTION (2008) (discussing violence in Colfax, Louisiana, in 1873 and the legal aftermath).

²⁴⁷ See Gillian Brockell, *A White Mob Unleashed the Worst Election Day Violence in U.S. History in Florida a Century Ago*, WASH. POST (Nov. 2, 2020, 7:00 AM), <https://www.washingtonpost.com/history/2020/11/02/ocoee-florida-election-day-massacre/>;

in Ocoee later became the mayor of the city, and the violence that propelled him to that seat was largely erased from collective memory.²⁴⁸

The White mobs who destroyed Black communities aimed to extinguish Black economic and social success, as well as political power. As noted above, Wilmington, North Carolina, was home to numerous members of a thriving Black middle class in 1898, most of whom were either killed or driven out of the city as a result of the coup.²⁴⁹ The most infamous example of a violent White attack on an economically prosperous Black community occurred about twenty years later in Tulsa, Oklahoma, when “Black Wall Street” was burned to the ground.²⁵⁰ By the time it ended, the perpetrators of the Tulsa Race Massacre (formerly known as the Tulsa Race Riot) had killed at least 300 Black people, burned 40 city blocks, and left 10,000 Black people homeless.²⁵¹ Similarly, yet on a smaller scale, a prosperous community of a few hundred Black families in Rosewood, Florida, was “wiped off the map” by White mobs who burned it to the ground in January 1923.²⁵² In other cases, direct competition with Black workers triggered the violence, as in the summer of 1917, when “rampaging whites began brutally beating and killing” Black people in East St. Louis, Missouri, due to a labor dispute, devastating a Black “community on the rise.”²⁵³ Numerous riots and massacres targeted Black communities during the Red Summer of 1919, when White workers responded to economic competition with Black men

see also Paul Ortiz, *Ocoee, Florida: Remembering ‘The Single Bloodiest Day in Modern U.S. Political History’*, *FACING S.* (May 14, 2010), <https://www.facingsouth.org/2010/05/ocoe-florida-remembering-the-single-bloodiest-day-in-modern-us-political-history.html>.

²⁴⁸ *See* Brockell, *supra* note 247.

²⁴⁹ *See* discussion *supra* Section I.B.

²⁵⁰ *See generally* SCOTT ELLSWORTH, *THE GROUND BREAKING: THE TULSA RACE MASSACRE AND AN AMERICAN CITY’S SEARCH FOR JUSTICE* (2021); RANDY KREHBIEL, *TULSA, 1921: REPORTING A MASSACRE* (2019); JAMES S. HIRSCH, *RIOT AND REMEMBRANCE: THE TULSA RACE WAR AND ITS LEGACY* (2014).

²⁵¹ *See* Brockell, *supra* note 247.

²⁵² *See* Jessica Glenza, *Rosewood Massacre a Harrowing Tale of Racism and the Road Toward Reparations*, *GUARDIAN* (last updated July 14, 2017, 4:16 PM), <https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations>. *See generally* EDWARD GONZALEZ-TENNANT, *THE ROSEWOOD MASSACRE: AN ARCHAEOLOGY AND HISTORY OF INTERSECTIONAL VIOLENCE* (2019) (analyzing the events of the 1923 race massacre in Rosewood, Florida).

²⁵³ Allison Keyes, *The East St. Louis Race Riot Left Dozens Dead, Devastating a Community on the Rise*, *SMITHSONIAN MAG.* (June 30, 2017), <https://www.smithsonianmag.com/smithsonian-institution/east-st-louis-race-riot-left-dozens-dead-devastating-community-on-the-rise-180963885/>.

in various contexts by destroying Black communities and indiscriminately killing Black people.²⁵⁴

These acts of terrorism against Black communities were fueled by the propaganda of White supremacy and often lit by a common match: the intimation of sex between White women and Black men, with Black men typically cast as a predatory threat. In a world where the rape of Black women by White men was pervasive and real, the mere suggestion of a Black man stepping over the color line with a White woman frequently triggered murder and mayhem on a massive scale.²⁵⁵ As discussed previously, Red Shirt paramilitaries, led by White elites, ousted the Fusionists in Wilmington to install a Democratic White supremacist government.²⁵⁶ Their excuse for doing so, however, was a *Daily Record* editorial in which Alexander Manly suggested that some sexual encounters between White women and Black men were consensual.²⁵⁷ The destruction of Black Wall Street was triggered by an encounter between two teenagers in an elevator, during which a Black man likely tripped and grabbed a White woman's arm as he fell.²⁵⁸ Whites burned Rosewood to the ground and lynched multiple Black men, because a White woman in a nearby town was beaten and claimed her assailant was an unnamed "negro."²⁵⁹ Media reports of a "negro fiend" attacking White women in

²⁵⁴ Robinson, *supra* note 241. Racially driven violence against Black people occurred in about two dozen cities during the Red Summer of 1919. *Id.*; DARITY & MULLEN, *supra* note 243, at 216–17. See generally DAVID F. KRUGLER, 1919, THE YEAR OF RACIAL VIOLENCE: HOW AFRICAN AMERICANS FOUGHT BACK (2014); CAMERON MCWHIRTER, RED SUMMER: THE SUMMER OF 1919 AND THE AWAKENING OF BLACK AMERICA (2012). One of the worst occurred in Elaine, Arkansas, where attempts to unionize Black farmers led to mass violence against the Black community; "[f]or days, mobs of white men killed at least 200 Black people, with assistance from about 500 [state] troops. . . ." Lateshia Beachum, *A Massacre of Blacks Haunted This Arkansas City. Then a Memorial Tree Was Cut Down.*, WASH. POST (Aug. 30, 2019), <https://www.washingtonpost.com/history/2019/08/30/massacre-blacks-haunted-this-arkansas-city-then-someone-cut-down-memorial-tree/>. See generally ROBERT WHITAKER, ON THE LAPS OF GODS: THE RED SUMMER OF 1919 AND THE STRUGGLE FOR JUSTICE THAT REMADE A NATION (2009). During this era, White mobs also attacked Black communities in Chicago, Illinois; Longview, Texas; Norfolk, Virginia; Omaha, Nebraska; Charleston, South Carolina; Indianapolis, Indiana; and Bisbee, Arizona. DARITY & MULLEN, *supra* note 243, at 217.

²⁵⁵ Alexander Manly published a controversial editorial in August 1897, one year before the *Daily Record* office was burned to the ground, in which he pointed out that "persistent rapes of black women by white men went unpunished." ZUCCHINO, *supra* note 31, at 85.

²⁵⁶ See discussion *supra* Section I.C.

²⁵⁷ See *supra* notes 55–62 and accompanying text.

²⁵⁸ Yuliya Parshina-Kottas, et al., *What the Tulsa Race Massacre Destroyed*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html>.

²⁵⁹ Glenza, *supra* note 252.

Washington, D.C., in 1919 ultimately resulted in “the arrest of hundreds of innocent Black men, a riot that left as many as 39 dead and 150 injured,” and decades of imprisonment for two Black men who likely were wrongfully convicted.²⁶⁰ Fabricated stories of Black men attacking White women precipitated the destruction of Black-owned businesses and the murder of Black citizens in Atlanta in 1906, “in what amounted to an American *Kristallnacht*.”²⁶¹ This pattern continued well into the twentieth century, as White men, particularly in the South, perceived any alleged crossing over the color line by a Black man with a White woman as a license to kill.²⁶²

Until recently, these events—if they were remembered at all—were portrayed as “race riots” rather than “massacres,” a word that better characterizes the typically one-sided nature of the death and destruction.²⁶³ History has largely depicted the perpetrators of these instances of mass violence against Black communities as spontaneous and uncontrolled mobs.²⁶⁴ However, state and local law enforcement frequently participated in the slaughter of Black communities, or, at a minimum, they were ineffectual at stopping it.²⁶⁵ Paramilitary groups like the Ku Klux Klan and the Red Shirts were either integrated into local law enforcement or tacitly

²⁶⁰ Gillian Brockell, *The Deadly Race Riot ‘Aided and Abetted’ by The Washington Post a Century Ago*, WASH. POST (July 15, 2019), <https://www.washingtonpost.com/history/2019/07/15/deadly-race-riot-aided-abetted-by-washington-post-century-ago/>.

²⁶¹ Robinson, *supra* note 241.

²⁶² See generally TIMOTHY B. TYSON, *THE BLOOD OF EMMETT TILL* (2017) (describing and analyzing the lynching of Emmett Till in Mississippi in 1955, allegedly because he whistled at a White woman); TIMOTHY B. TYSON, *BLOOD DONE SIGN MY NAME: A TRUE STORY* (2005) (describing and analyzing the murder of Henry Marrow in Oxford, North Carolina, in 1970, for similar reasons).

²⁶³ See, e.g., Kendrick Marshall, *Tulsa Race Massacre: For Years It Was Called a Riot. Not Anymore. Here’s How It Changed.*, TULSA WORLD, https://tulsaworld.com/news/local/racemassacre/tulsa-race-massacre-for-years-it-was-called-a-riot-not-anymore-heres-how-it/article_47d28f77-2a7e-5b79-bf5f-bdfc4d6f976f.html (last updated May 29, 2021).

²⁶⁴ See Jennifer Rae Taylor, *A History of Tolerance for Violence Has Laid the Groundwork for Injustice Today*, AM. BAR ASS’N (May 16, 2019), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future/tolerance-for-violence/ (noting that the frequent lynchings of Black people during this era, predominantly in the South, “were not isolated hate crimes committed by rogue vigilantes; they were targeted racial violence perpetrated to uphold an unjust social order.”).

²⁶⁵ DARITY & MULLEN, *supra* note 243, at 216 (“[L]ocal police forces were implicated as agents of exterminatory onslaughts directed against Blacks” in Wilmington and elsewhere).

sanctioned by it.²⁶⁶ The federal government likewise did little to protect Black communities, and, when it did, the Supreme Court often negated its efforts by holding that the federal government lacked the power to enforce laws designed to protect Black citizens.²⁶⁷ As discussed below, many victims—like the Black citizens of Wilmington—were intentionally driven from their homes in such numbers that the terror inflicted upon them can best be described as an ethnic cleansing.²⁶⁸ Most victims of this state-sanctioned violence have never received any form of reparative justice, despite persistent attempts to seek it.

B. Understanding the Wilmington Massacre and Coup and other Attacks on Black Communities as Ethnic Cleansing

What happened in Wilmington, North Carolina, in 1898 was more than a series of individual criminal acts (although numerous criminal laws, both state and federal, were violated). Instead, what happened in Wilmington and in numerous Black communities across the United States during this era, as discussed above, was a deliberate, government-sanctioned or enabled ethnic cleansing of a minority group: Black Americans. They were pushed out of their homes and communities, deprived of their livelihoods, robbed of their civil and political rights, and scores of them were murdered. These events constituted a human rights violation on a massive scale, enabled by the federal government of the United States and, in the case of Wilmington, the state government of North Carolina and Wilmington's own local government.

“Ethnic cleansing” is a term typically associated with human rights atrocities committed outside the United States, e.g., Bosnia in the 1990's and Myanmar in 2012.²⁶⁹ Even within the United States, “ethnic

²⁶⁶ Geoff Ward, *Living Histories of White Supremacist Policing: Towards Transformative Justice*, 15 DU BOIS REV.: SOC. SCI. RES. ON RACE 167, 172–73 (2018). The author of this article, Dr. Geoff K. Ward, is a descendant of a survivor of the Wilmington Massacre of 1898. See *infra* note 534 and accompanying text.

²⁶⁷ See, e.g., *United States v. Cruikshank*, 92 U.S. 542, 555–65 (1875) (holding that the federal government lacked the power to prosecute crimes depriving citizens of their political and civil rights, unless the perpetrator was a state actor rather than an individual). Historian Eric Foner has observed that this Supreme Court decision “rendered national prosecution of crimes committed against Blacks virtually impossible and gave a green light to acts of terror where local officials either could not or would not enforce the law.” FONER, *supra* note 246, at 531.

²⁶⁸ See discussion *infra* Section II.B.

²⁶⁹ See Eric Rosand, *The Right to Compensation in Bosnia: An Unfulfilled Promise and a Challenge to International Law*, 33 CORNELL INT'L L.J. 113 (2000) (discussing reparations for

cleansing” is typically used to describe the federal government’s treatment of indigenous, Native American populations, not Black Americans after the Civil War.²⁷⁰ To understand how an ethnic cleansing could have occurred in Wilmington in 1898, in the midst of a so-called democratic society, the terms must first be defined. “Ethnicity” or “ethnic groups” refer to groups that define themselves or are “defined by others as sharing common descent and culture.”²⁷¹ The term “ethnic cleansing” describes a human rights violation in which members of one ethnic group remove “another such group from a locality they define as their own.”²⁷² In the context of the Kosovo/Serbia conflict, the United States State Department defined “ethnic cleansing” as “the systematic and forced removal of members of an ethnic group from their communities to change the ethnic composition of a region.”²⁷³ The process of removal may be accomplished by a “variety of methods with the aim to expel, including harassment, discrimination, beatings, torture, rape, summary executions, relocation of populations by force, confiscation of property and destruction of homes and places of worship and cultural institutions.”²⁷⁴ Many of these methods

victims of ethnic cleansing in Bosnia); *Burma: End ‘Ethnic Cleansing’ of Rohingya Muslims*, HUM. RTS. WATCH (Apr. 22, 2013, 12:00 AM), <https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims> (describing a “campaign of ethnic cleansing against Rohingya Muslims in Arakan State,” in Myanmar, beginning in June 2012).

²⁷⁰ See, e.g., Lorie M. Graham, *Reparations, Self-Determination, and the Seventh Generation*, 21 HARV. HUM. RTS. J. 47 (2008); William Bradford, “*With a Very Great Blame on Our Hearts*”: *Reparations, Reconciliation, and an American Indian Plea for Peace with Justice*, 27 AM. INDIAN L. REV. 1, 22–25 (2002).

²⁷¹ MICHAEL MANN, *THE DARK SIDE OF DEMOCRACY: EXPLAINING ETHNIC CLEANSING* 3, 11 (2005). The Black community targeted in Wilmington in 1898 was arguably more appropriately characterized as an ethnic group, rather than a racial group, given that many members of this group were of mixed race or other races. Alexander Manly, the son of North Carolina’s White governor and a Black woman, could “pass as white.” UMFLEET, *supra* note 15, at 184. William E. Henderson, a lawyer and a leader in the Black community, identified as Black but his father was White, and his mother was Native American. ZUCCHINO, *supra* note 31, at 55. White supremacists referred to another prominent Black citizen in Wilmington, Daniel Wright, as a “half-breed Indian.” *Id.* at 209.

²⁷² MANN, *supra* note 271, at 11.

²⁷³ *Erasing History: Ethnic Cleansing in Kosovo*, U.S. DEP’T STATE (May 1999), https://1997-2001.state.gov/regions/eur/rpt_9905_ethnic_ksvo_exec.html; see also Graham, *supra* note 270, at 67; Rosand, *supra* note 269, at 118 (defining ethnic cleansing as “the elimination by the dominant ethnic group of a given territory of members of other ethnic groups.”).

²⁷⁴ Rosand, *supra* note 269, at 118.

were implemented in Wilmington in 1898 and elsewhere across the United States, as described above.²⁷⁵

The ethnic group that was targeted in Wilmington in 1898 was the Black community or, as their persecutors described them, “the Negroes.”²⁷⁶ Although most were only recently released from the bonds of chattel slavery, many members of Wilmington’s Black community were thriving. The majority of the population of Wilmington (56%) was Black.²⁷⁷ As discussed above, before November 10, 1898, Wilmington was home to a burgeoning Black middle class.²⁷⁸ Because the Fusionist party had won two state-wide elections, a limited number of Black men held public offices, such as “aldermen, magistrates, deputy sheriffs, police officers, and registers of deeds.”²⁷⁹ The presence of Black men in such positions enraged the White elites who had ruled Wilmington for generations.²⁸⁰ They considered Wilmington and all of North Carolina “their country,” and they were determined to rule it, by any means necessary.²⁸¹ In a speech delivered shortly before Election Day, 1898, Col. Waddell summed up this belief in an infamous speech delivered to a thousand cheering White men and women:

It is just, and right . . . for both races that the white people who settled this country, and civilized it . . . should alone govern it . . . It is their country and they have a right to rule it. It will be absolutely suicidal for the Negroes to continue to resist this inevitable result . . . We will have no more of the intolerable conditions under which we live. We are resolved to change them if we have to choke the current of the Cape Fear [River] with carcasses!²⁸²

Waddell was, of course, referring to the carcasses of Black people when he made this speech. The number of Black people killed on November 10, 1898, will never be known with any degree of certainty, but a “murderous cleansing” did occur. Sociologist Michael Mann writes that

²⁷⁵ See discussion *supra* Sections I.D, II.A.

²⁷⁶ In the White Declaration of Independence, published in the *Wilmington Messenger* after the election of 1898, the leaders of the massacre and coup (which occurred on the following day) proclaimed that “[t]he time ha[d] passed for the intelligent [White] citizens of the community . . . to be ruled by negroes.” UMFLEET, *supra* note 15, at 76.

²⁷⁷ ZUCCHINO, *supra* note 31, at 68.

²⁷⁸ See discussion *supra* Section I.B.

²⁷⁹ ZUCCHINO, *supra* note 31, at 68.

²⁸⁰ See *infra* notes 288–89.

²⁸¹ In the Democratic Party Handbook, produced to launch the White Supremacy Campaign of 1898, Furnifold Simmons wrote that “this is a white man’s country and white men must control and govern it.” ZUCCHINO, *supra* note 31, at 75.

²⁸² UMFLEET, *supra* note 15, at 49; ZUCCHINO, *supra* note 31, at 146–47.

“[e]thnic hostility rises where ethnicity trumps class as the main form of social stratification, in the process capturing and channeling classlike sentiments towards ethnonationalism.”²⁸³ The Democrats deliberately stoked racial and ethnic hostility to enable their coup. For a brief period prior to 1898, class allegiance had triumphed over differences of race and ethnicity, allowing the Fusionist political party to win elections in Wilmington and throughout North Carolina.²⁸⁴ Josephus Daniels, Colonel Waddell, and other White supremacist leaders knew that, to retake control of the government, they had to reverse that allegiance. They succeeded in doing so using vicious White supremacist propaganda backed by violence.²⁸⁵

To carry out a murderous ethnic cleansing, three levels of perpetrators are needed: (1) “radical elites,” (2) paramilitary groups, and (3) “core constituencies providing mass though not majority population support.”²⁸⁶ Wilmington had all three. Daniels recalled that the Democratic Party needed “men who could write, men who could speak, and men who could ride—the last by no means the least important.”²⁸⁷ The “radical elites”—i.e., the men who could write and the men who could speak—orchestrated the coup.²⁸⁸ In addition to Daniels, Waddell, and Democratic Party leader Furnifold Simmons, these elites included groups calling themselves the “Secret Nine” and “Group Six.”²⁸⁹ Paramilitary groups, such as the Red Shirts (the “men who could ride”), were the main perpetrators of the violence, led by the elites.²⁹⁰ Core constituencies of White men and women attended political rallies and other mass meetings,

²⁸³ MANN, *supra* note 271, at 5.

²⁸⁴ See *supra* notes 70–71 and accompanying text.

²⁸⁵ See discussion *supra* Sections I.C, I.D.

²⁸⁶ MANN, *supra* note 271, at 8. The White supremacy campaign that carried out the ethnic cleansing of Wilmington in 1898 was a typical “radical ethnonationalist movement” where “leaders come from the upper and middle classes, the rank-and-file from lower down—with the real dirty work often performed by the working class.” *Id.* at 9. In such movements, “[p]ower is exercised in three distinct ways: top-down by elites, bottom-up by popular pressures, and coercively sideways by paramilitaries.” *Id.* at 8.

²⁸⁷ UMFLEET, *supra* note 15, at 38.

²⁸⁸ *Id.* at 104 (noting that, by the end of the day on November 10, 1898, “the white leaders of Wilmington had successfully manipulated the masses into open warfare.”).

²⁸⁹ ZUCCHINO, *supra* note 31, at 98–99. The members of the Secret Nine were Hardy L. Fennell, William Gilchrist, William A. Johnson, Edward S. Lathrop, Hugh MacRae, Pierre B. Manning, Walter L. Parsley, L.B. Sasser, and J. Allan Taylore. Group Six was composed of William L. Smith, John Beery, Henry G. Fennell, Thomas D. Meares, William F. Robertson, and Col. Walker Taylor. UMFLEET, *supra* note 15, at 47.

²⁹⁰ UMFLEET, *supra* note 15, at 41–43, 53–55.

cheering on the elites and embracing their advocacy of “violence as a legitimate solution to social problems.”²⁹¹ The message conveyed at these meetings and constantly reinforced in print was clear. White working-class men had to do more than vote for Democrats: they had to be willing to kill Black people, first to stop them from voting and then to drive them out of Wilmington.²⁹²

The motivations for murderous ethnic cleansing may have varied somewhat among these ranks of White men. The men at the top—e.g., Daniels and Waddell—can probably best be described as “ideological killers.” Typically found “among the higher ranks of perpetrators,” ideological killers believe their “murderous means” are “justified by higher goals.”²⁹³ The “most common ideological motive” is the self-righteous invocation of self-defense: “the killer protests that he is really the victim.”²⁹⁴ Speaking just weeks before the 1898 election, Col. Waddell proclaimed to throngs of cheering White men and women that *they* were the victims of a heinous crime: “the greatest crime that has ever been perpetrated against modern civilization was the investment of the negro with the right of suffrage.”²⁹⁵ The hallmarks of ideological killing were also present in the White Declaration of Independence, presented to the White citizens of Wilmington *after* the Democrats had swept the election of 1898: “[W]e must act now or leave our descendants to a fate too gloomy to be borne”: “subjection to an inferior race,” i.e., “men of African origin.”²⁹⁶

²⁹¹ MANN, *supra* note 271, at 28; *see also id.* at 8–9.

²⁹² *See* ZUCCHINO, *supra* note 31, at 75 (noting that, leading up to the election of 1898, White men “were told, every day, in newspapers and at campaign rallies next to cotton farms and tobacco fields, that the only way to eliminate the threat [posed by Black men] forever was for the good white men of Carolina to bring out their guns.”).

²⁹³ MANN, *supra* note 271, at 27.

²⁹⁴ *Id.* The ideological construction of a self-defense rationale should be differentiated from “fearful killers” who kill only because they “feel credibly threatened” and may need to be coerced into participating in a murderous ethnic cleansing. *Id.* at 28. Although elites used fear as a tool to generate support among their core constituencies, they knew that the stories they published regarding Black uprisings and Black rapists were false or at least greatly exaggerated. The fear they created among a certain portion of the population was real, but it was deliberately manufactured based on lies. Elites knew that the Black community did not pose a real threat to the security of the White population of Wilmington.

²⁹⁵ UMFLEET, *supra* note 15, at 50.

²⁹⁶ *Id.* at 76. Waddell’s cousin, Rebecca Cameron, condoned violence even more explicitly in a letter to Waddell written shortly after he gave this speech. She wrote,

Solomon says ‘there is a time to kill.’ That time seems to have come so get to work and don’t stop short of a complete cleaning of the decks. If you have to start make

The men who formed paramilitary groups like the Red Shirts were more likely “bigoted” or “violent” killers, or some combination of both, although all three motivations were likely shared among each group. Bigoted killers are motivated by prejudice, especially when feeling threatened by the targeted minority group.²⁹⁷ Violent killers “are drawn to murder itself,” most commonly when “a sense of threat leads to an all-enveloping sense of personal humiliation, followed by a self-righteous rage to expunge it.”²⁹⁸ “Ethnic hatreds” may raise this cycle of perceived threat, humiliation, and resultant rage to a collective level.²⁹⁹ As Black men gained political and economic power in the post-Civil War South, many White men felt threatened and enraged by their success. Thus, they embraced the opportunity to murder Black men with impunity when “radical elites” like Aycock and Waddell told them or implied it was their duty to do so.³⁰⁰ The masses of White men and women who cheered both the elites and the paramilitary troops carrying out their orders shared similar motivations.

Given these motivations, it is perhaps not surprising the ethnic cleansing of Wilmington targeted “troublesome Negroes”: typically men who did not “know their place” in a White dominated society and thus inspired the highest degree of rage among White men.³⁰¹ Sociology terms this type of forced removal “politicide,” “killing [or removal] where the intended target is the entire leadership and potential leadership class of a

a finish once and for all and then we will talk about calling a convention to alter the constitution sufficiently to disfranchise now and forever all the negroes white and Black. You go forward to your work bloody tho' it may be, with the heart felt approval of a good many women in the State.

Rebecca Cameron to Alfred Moore Waddell (Oct. 26, 1898), *reprinted in* UMFLEET, *supra* note 15, at 5.

²⁹⁷ MANN, *supra* note 271, at 27–28.

²⁹⁸ *Id.* at 28.

²⁹⁹ *Id.*

³⁰⁰ Democratic leader George Rountree planned to deliver a speech to a chapter meeting of the White Government Union, to “inflame the white men’s sentiment” in the months leading to the election, but found his speech was unnecessary, as the men were “already willing to kill all of the office holders and all the negroes.” UMFLEET, *supra* note 15, at 48 (quoting Rountree, *My Personal Recollection of the Election of 1898*).

³⁰¹ See *infra* notes 305–306 and accompanying text; see also UMFLEET, *supra* note 15, at 104 (noting that some Black men “were allowed to remain in Wilmington so long as they ‘knew their place.’”).

more generally victimized and feared group.”³⁰² Targeting leaders and intellectuals is “intended to undermine the out-group’s cultural identity.”³⁰³ After Wilmington’s democratically elected government was removed by a coup, the newly-installed White supremacist regime drew up a list of Black men and White “race traitors” targeted for banishment.³⁰⁴ The list included two general categories of Black men: 1) leaders who opposed White supremacy and openly supported full political participation by Blacks, and 2) “businessmen and entrepreneurs whose financial successes were galling to the white upper and working classes.”³⁰⁵ The Red Shirts also summarily executed some men who were regarded as particularly offensive rather than forcing them to leave Wilmington.³⁰⁶

Although the Wilmington Coup specifically targeted Black leaders, the events of 1898 were more than just politicide, as described above. The campaign was designed to force much of the Black population out of Wilmington and return the city to “white control.”³⁰⁷ Untold numbers of

³⁰² MICHAEL MANN, EXPLAINING MURDEROUS ETHNIC CLEANSING: EIGHT THESIS 6 (2002). Other examples of politicide include the Nazis’ execution of educated Poles and the Burundian Tutsis’ murder of educated Hutus. *Id.*

³⁰³ See UMFLEET, *supra* note 15, at 17. In Wilmington, White Democrats took additional steps to undermine Black cultural identity after the coup. See *supra* notes 224–229 and accompanying text.

³⁰⁴ See *supra* notes 143–44 and accompanying text.

³⁰⁵ UMFLEET, *supra* note 15, at 106. The list included an entire group of Black leaders known as the Committee of Colored Citizens (“CCC”). *Id.* at 105. When one of the town’s leading Black lawyers asked what he had done and why he had to leave, he was told, “You are not the sort of man we want here.” ZUCCHINO, *supra* note 31, at 237.

³⁰⁶ See, e.g., ZUCCHINO, *supra* note 31, at 230–31 (describing the execution of an “outspoken Black barber,” Carter Peamon); see also *id.* at 209 (describing the murder of Daniel Wright, “regarded by many whites as a troublemaker and an instigator of Black rebellion.”). The Rev. J. Allen Kirk, a Black minister who was also banished, later wrote that the Red Shirts “went from house to house looking for Negroes that they considered offensive; took arms they had hidden and killed them for the least expression of manhood . . .” *Id.* at 210.

³⁰⁷ Just before Election Day 1898, the *Wilmington Messenger* printed the lyrics to the anthem of the White Supremacy Campaign (Rise Ye Sons of Carolina), under the headline *Gone to the n_____*: “Proud Caucasians one and all . . . Hear your wives and daughters call . . . With your strong and manly arms . . . Rise and drive this Black despoiler from your state.” ZUCCHINO, *supra* note 31, at 162 (emphasis added). After the coup, the *Messenger* printed an editorial echoing this sentiment. It encouraged White Men’s Unions to organize throughout the South to “encourage the employment of white men and . . . cause the negro to segregate or emigrate to other sections of the United States, which is all the more desirable.” *Id.* at 278. The authors and editors of this article, along with the *Elon Law Review*, recognize the harmful and lasting impact of derogatory terms used by White individuals to dehumanize Black individuals. Therefore, the

Black people (mostly men) were indiscriminately killed, even though they were neither political activists nor successful businessmen.³⁰⁸ Homes and personal property were destroyed. Women and children fled into the swamps and the cemetery to hide, fearful for their lives.³⁰⁹ In the aftermath of the violence of November 10, Black men were fired from their jobs so that White men could replace them.³¹⁰ The pogrom of 1898 led to an exodus of Black people from Wilmington, such that the city's population dropped from 56% Black in 1898 to 49% in 1900, and steadily declined thereafter.³¹¹ Wilmington was not alone in experiencing this type of systemic violence, which “ethnically cleansed” communities of their Black inhabitants so effectively that, in many of these towns, the population remains substantially White to this day.³¹²

The violence that forced an ethnic cleansing of Wilmington inflicted a severe blow to the Black community of the city and the State of North Carolina.³¹³ It also devastated individual lives and families.³¹⁴ The Coup of 1898 was even more devastating because the fraud and violence that it unleashed enabled the implementation of Jim Crow in North Carolina and served as an example to White supremacists throughout the United

usage of the “n” word will not be spelled out in this article. When this article includes quotations encompassing the “n” word, such as here, the following will represent that term: “n_____.”

³⁰⁸ Jane Cronly, a White Wilmington resident who did not approve of the violence, wrote in her diary that she saw White men shoot Black men “down right and left in a most unlawful way”; as they did, she heard one White man yell to another, “[w]e are just shooting to see the n_____ run.” ZUCCHINO, *supra* note 31, at 217.

³⁰⁹ See UMFLEET, *supra* note 15, at 101–102.

³¹⁰ See *supra* notes 214–23 and accompanying text.

³¹¹ ZUCCHINO, *supra* note 31, at 330–31; see *supra* notes 209–210 and accompanying text; see also Emma Dill, *Wilmington's Black Community Shrunk over the Past Thirty Years*, U.S. NEWS & WORLD REP. (Mar. 14, 2021, 12:01 AM), <https://www.usnews.com/news/best-states/north-carolina/articles/2021-03-14/wilmingtons-black-community-shrunk-over-the-past-30-years> (discussing reasons for the decline of the Black population in New Hanover County, particularly over the past thirty years).

³¹² See BANISHED: HOW WHITES DROVE BLACKS OUT OF TOWN IN AMERICA (Ctr. Investigative Reporting et al., 2006) (directed by Marco Williams). See also PATRICK PHILLIPS, BLOOD AT THE ROOT: A RACIAL CLEANSING IN AMERICA (2017) (discussing the “racial cleansing” of the Black community from Forsyth, Georgia).

³¹³ See UMFLEET, *supra* note 15, at 104 (observing that Black residents of Wilmington were “the foremost victims” of the coup, given that they “suffered banishment, the fear of further murders, deaths of loved ones, destruction of property, exile into cold swampland, or injury from gunfire”).

³¹⁴ See *infra* note 535 (discussing the impact of the coup on the family of Alexander Manly).

States.³¹⁵ The community and the individuals who suffered these wounds in 1898 have never been made whole.

C. Using Restorative Justice as a Tool to Heal the Victims of Ethnic Cleansing

Restorative justice provides a framework to redress wrongs committed by individuals and by societies, as well as restore or repair damaged relationships.³¹⁶ Embracing the restorative justice model requires a rethinking of the central purpose and meaning of “justice” and laws designed to achieve that end. Under the retributive conception of criminal justice, crime is defined as a violation of the law and hence the state; those who commit crimes are “guilty”; and the state’s role is to “determine blame (guilt) and impose pain (punishment).”³¹⁷ The central focus of the retributive system is on “offenders getting what they deserve.”³¹⁸ Under a restorative justice model, “crime” is defined as a “violation of people and relationships”; those violations create corresponding obligations; and “justice” is achieved by involving “victims, offenders, and community members in an effort to repair the harm.”³¹⁹ The harm reaches far beyond the individual victims of criminal acts, and therefore the aims of restorative justice include the “repair of victims, offenders, and the community of which they are a part.”³²⁰ Repairing the harm, i.e. reparations, thus lie at the heart of the philosophy of restorative justice.³²¹ Those who reject “reparations” out of hand, because they are viewed as punishing those who are not guilty, misunderstand the fundamental nature of restorative justice.

Restorative justice is particularly appropriate in the context of societal wrongs—as in the coup and ethnic cleansing of Wilmington in 1898—where the direct perpetrators and victims are long dead and, hence,

³¹⁵ See UMFLEET, *supra* note 15, at 136–39; ZUCCHINO, *supra* note 31, at 301–17.

³¹⁶ Graham, *supra* note 270, at 77.

³¹⁷ HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 30 (2015).

³¹⁸ *Id.*

³¹⁹ *Id.*; see also Alana Erin Tiemessen, *After Arusha: Gacaca Justice in Post-Genocide Rwanda*, 8 AFR. STUD. Q. 57, 60 (2004) (comparing retributive and restorative justice).

³²⁰ Graham, *supra* note 270, at 77 (quoting ELIZABETH V. SPELMAN, REPAIR: THE IMPULSE TO RESTORE IN A FRAGILE WORLD 51 (2003)).

³²¹ International law also recognizes a right to both individual and collective reparations to address gross violations of human rights, such as “genocide, systematic discrimination, and forcible transfer of a population or group.” Graham, *supra* note 270, at 80 (discussing G.A. Res. 60/147 (Mar. 21, 2006)).

beyond the reach of traditional criminal laws.³²² The deaths of the victims and the perpetrators, however, do not rectify the harms suffered or absolve the society of its obligation to repair them. Past human rights abuses may reverberate for years, as the targeted group continues to suffer ongoing economic and social deprivations.³²³ The contemporary effects of past horrific acts require redress and repair. Failure to do so may doom the society to repetitive cycles of violence and debilitating inequities.³²⁴ Thus, the pursuit of restorative justice is not just a moral responsibility but a societal imperative.

The central focus of restorative justice, as discussed above, is not to assign guilt or blame to perpetrators or their descendants.³²⁵ Moreover, although “forgiveness” and “reconciliation” are often associated with restorative justice practices, these aims cannot be achieved in isolation.³²⁶ Those who rush to demand forgiveness or reconciliation without first doing the hard work of confronting the truth of the past and seeking to repair it are doomed to fail.³²⁷ “Forgiveness” cannot be achieved by forgetting the past; instead, it first requires a “truthful remembering.”³²⁸

³²² Efforts to punish the perpetrators of the 1898 Massacre and Coup under the criminal law failed. No one was ever charged, even though the perpetrators of mass murder were widely known and there was abundant evidence of their guilt. See ZUCCHINO, *supra* note 31, at 257–60 (describing the county coroner’s inquest, in which no White person was charged with any crime); *id.* at 293–99 (discussing Attorney General John W. Griggs’ failed attempt to conduct a federal investigation of the racial violence in Wilmington, which resulted in no indictments).

³²³ See Graham, *supra* note 270, at 81 (citing *An Approach to Reparations*, HUMAN RIGHTS WATCH (July 19, 2001, 10:43 AM), <https://www.hrw.org/news/2001/07/19/approach-reparations>).

³²⁴ As philosopher Janna Thompson has written,

Historical injustices cast a long shadow. Their effects can linger long after the perpetrators and their victims are dead. They haunt the memories of descendants, blight the history of peoples, and poison relations between communities. They are the root cause of many existing inequities. Historical grievances . . . are at the heart of some of the bloodiest struggles and deeds in both historical and contemporary times.

JANNA THOMPSON, *Introduction* to TAKING RESPONSIBILITY FOR THE PAST: REPARATION AND HISTORICAL JUSTICE, at vii (2002).

³²⁵ Graham, *supra* note 270, at 77.

³²⁶ See Howard J. Vogel, *Healing the Trauma of American’s Past: Restorative Justice, Honest Patriotism, and the Legacy of Ethnic Cleansing*, 55 BUFF. L. REV. 981, 1025 (2007).

³²⁷ *Id.*

³²⁸ *Id.* at 1026.

Confronting hard truths must be followed by a “moral judgment of wrong, injustice, and injury” that “neither ignores past evil nor excuses it.”³²⁹

Acknowledging the awful truth of the past should be accompanied by a genuine apology by the perpetrator(s) for their role in inflicting the harm.³³⁰ That acknowledgement, by itself, does not result in forgiveness or reconciliation, but it is an essential step.³³¹ Speaking truth must be followed by efforts to repair that harm, which are “essential to the construction of a basis for trust between the groups of people involved.”³³² Only after such efforts have been made can opposing societal groups turn away from vengeance and, instead, develop “empathy for the enemy’s humanity,” thus achieving true reconciliation.³³³ This effort aims to deliver “the human future from repetitions of the atrocities of the past.”³³⁴ Nothing could provide our children with a greater gift.

D. Past Attempts to Provide Reparations to Black Victims of White Violence in the United States

The use of restorative justice—including reparations—to address the harms inflicted by gross human rights abuses is not novel or new. The Republic of Germany began working on a program of reparations for the victims of the Holocaust, millions of whom were murdered by the Nazi

³²⁹ *Id.* (quoting DONALD W. SHRIVER, JR., AN ETHIC FOR ENEMIES: FORGIVENESS IN POLITICS 9 (1995)).

³³⁰ See ROY L. BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS 144–51 (2019) (describing the elements of a genuine apology); Stephanos Bibas & Richard A. Bierschbach, Essay, *Integrating Remorse and Apology into Criminal Procedure*, 114 YALE L.J. 85, 112–18 (2004) (explaining how “expressions of remorse and apology” act as “social mechanisms of healing, reconciliation, moral education, and reintegration.”).

³³¹ See Bibas & Bierschbach, *supra* note 330, at 103 (noting the importance of “remorse and apology” as part of the holistic process of restorative justice); Roy L. Brooks, *Postconflict Justice in the Aftermath of Modern Slavery*, 46 G.W. INT’L L. REV. 243, 269 (2014) (concluding that apologies can be useful when accompanied by reparations) [hereinafter Brooks, *Postconflict Justice*].

³³² Vogel, *supra* note 326, at 1025; see also Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 323, 397 (1987) (defining “reparations” to require the “formal acknowledgement of historical wrong, the recognition of continuing injury, and the commitment to redress”).

³³³ Vogel, *supra* note 326, at 1026.

³³⁴ *Id.* at 1026–27 (quoting DONALD W. SHRIVER, JR., AN ETHIC FOR ENEMIES: FORGIVENESS IN POLITICS 7–8 (1995)).

regime, in 1949.³³⁵ These reparations, which are ongoing, have included an official apology, monetary payments of over \$80 billion to survivors, and “attempts to rebuild communities.”³³⁶ South Africa’s Truth and Reconciliation Commission constitutes a well-known example of a government applying restorative justice techniques to remedy the devastation caused by its own human rights abuses.³³⁷ The Commission began its work in 1996 to repair the harms caused by forty-three years of racial apartheid, with mixed success.³³⁸ No such commission has ever been created in the United States to address the human rights abuses that this country has inflicted on its Black citizens.

The United States government has made few attempts to repair the harms it has inflicted on various groups, although it has taken the initial step of acknowledging the wrong and apologizing for it in a handful of cases.³³⁹ On the 100th anniversary of a U.S.-backed coup that deposed the government of the Kingdom of Hawaii on January 17, 1893, the United States Congress passed a Joint Resolution, signed by President Bill Clinton, apologizing “to Native Hawaiians on behalf of the People of the United States” for this act as well as the resultant “suppression of the inherent sovereignty of the Native Hawaiian people.”³⁴⁰ President Clinton also held a ceremony where he apologized to the victims of the Tuskegee Experiment, in which the U.S. Public Health Service unethically experimented on Black men for over forty years, allowing them to continue suffering from syphilis for the purpose of studying the long-term

³³⁵ See Graham, *supra* note 270, at 82–83; Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (discussing the history of reparations in Germany, as applied to the victims of the Holocaust).

³³⁶ See Graham, *supra* note 270, at 83.

³³⁷ See Brooks, *Postconflict Justice*, *supra* note 331, at 262–63 (discussing the South Africa Truth and Reconciliation Commission as a form of civil redress for mass atrocities).

³³⁸ See Graham, *supra* note 270, at 84–85; see also Mary Kay Magistad, *South Africa’s Imperfect Progress, 20 Years After the Truth & Reconciliation Commission*, PRI, THE WORLD (Apr. 6, 2017, 1:45 AM), <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission>.

³³⁹ See Danny Lewis, *Five Times the United States Officially Apologized*, SMITHSONIAN MAG. (May 27, 2016), <https://www.smithsonianmag.com/smart-news/five-times-united-states-officially-apologized-180959254/>.

³⁴⁰ Pub. L. No. 103–150, 107 Stat. 1510 (Nov. 23, 1993). The resolution did not commit to provide reparations to Native Hawaiians. *Id.*; see also The Learning Network, *Jan. 17, 1893: Hawaiian Monarchy Overthrown by America-Backed Businessmen*, N.Y. TIMES (Jan. 17, 2012, 4:01 AM), https://learning.blogs.nytimes.com/2012/01/17/jan-17-1893-hawaiian-monarchy-overthrown-by-america-backed-businessmen/?_r=0 (describing the coup).

effects of the disease.³⁴¹ Congress issued an apology to Native Americans during the Obama administration, but it was buried in a defense appropriation bill and signed but never spoken aloud by the President.³⁴² Most significantly, President Ronald Reagan signed the 1988 Civil Liberties Act, officially apologizing on behalf of the American people for imprisoning Japanese American families in internment camps during World War II.³⁴³ The Act also created a fund to educate the public about the Japanese internment program and paid reparations to surviving victims, in the amount of \$20,000 per person.³⁴⁴

The United States government has never officially apologized for slavery or the system of legalized racial apartheid that persisted for decades after emancipation, Jim Crow.³⁴⁵ The House and the Senate each passed a resolution apologizing for “the enslavement and racial segregation of African Americans” in 2008 and 2009 respectively, but the versions were never reconciled or signed by the President.³⁴⁶ Nine states

³⁴¹ See John F. Harris & Michael A. Fletcher, *Six Decades Later, an Apology*, WASH. POST (May 17, 1997), <https://www.washingtonpost.com/archive/politics/1997/05/17/six-decades-later-an-apology/2e196b6a-87af-434a-b151-0a50202fb215/>. Clinton called the experiment “shameful” and “clearly racist.” *Id.*

³⁴² See Negiel Bigpond & Samuel Brownback, *It’s Long past Time for Our Country to Apologize Publicly for What it Did to Native People*, WASH. POST (July 6, 2021, 7:06 PM) <https://www.washingtonpost.com/opinions/2021/07/06/native-peoples-an-apology-never-spoken-is-no-apology-all/>; Rob Capriccioso, *A Sorry Saga: Obama Signs Native American Apology Resolution; Fails to Draw Attention to it*, INDIAN COUNTRY TODAY, republished by Indian Law Resource Center (Jan. 13, 2010), <https://indianlaw.org/node/529>. The resolution states that Congress apologizes “on behalf of the people of the United States to all Native peoples for the many instances of violence, maltreatment, and neglect inflicted on Native peoples by citizens of the United States.” *Id.*

³⁴³ H.R. 442, 100th Cong. (1988).

³⁴⁴ *Id.*; see also Graham, *supra* note 270, at 83–84; Bilal Qureshi, *From Wrong to Right: A U.S. Apology for Japanese Internment*, NPR CODE SWITCH (Aug. 9, 2013, 4:24 PM), <https://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

³⁴⁵ See Mark Medish & Daniel Lucich, *Congress Must Officially Apologize for Slavery Before America Can Think About Reparations*, NBCNEWS (Aug. 30, 2019, 4:30 AM), <https://www.nbcnews.com/think/opinion/congress-must-officially-apologize-slavery-american-think-about-reparations-ncna1047561>. See also BROOKS, *supra* note 330, at 2 (describing Jim Crow as “a government-mandated or -sanctioned program of racial hegemony and racial preferences for whites.”).

³⁴⁶ See H.R. Res. 194, 110th Cong. (July 29, 2008); S. Con. Res. 26, 111th Cong. (June 18, 2009); see also Theodore R. Johnson, *How to Apologize for Slavery: What the U.S. Can Learn from West Africa*, ATLANTIC (Aug. 6, 2014), <https://www.theatlantic.com/international/archive/2014/08/how-to-apologize-for-slavery/375650/>.

have officially apologized for the harms they inflicted on Black people by enslaving them, including North Carolina.³⁴⁷ However, government entities in the United States—federal, state, and local—have done little to pursue restorative justice for Black Americans beyond the initial step of acknowledging the harm inflicted and apologizing for it (and most have not done even that).³⁴⁸ Black Americans’ demand to be compensated for centuries of horrific abuse and stolen labor, followed by more years of violent persecution and systemic discrimination, again, is not new.³⁴⁹ Recently, however, the chorus demanding reparations as an instrument of restorative justice and as a right under domestic and international law has grown stronger.³⁵⁰ The need for reparation extends beyond the legal institution of slavery.³⁵¹ As discussed above, numerous instances of state-sponsored terrorism in the United States resulted in the deaths of Black people, the destruction of their homes and personal property, and their physical displacement.³⁵² The victims of these atrocities deserve justice.

To date, only one Black community victimized by state-sanctioned violence in the United States has sought and obtained a direct measure of reparative justice. In 1990, victims of the 1923 massacre in Rosewood,

³⁴⁷ See S.J. Res. 1557, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007) (apologizing “for the practice of slavery in North Carolina” and expressing “profound contrition for the official acts that sanctioned and perpetuated the denial of basic human rights and dignity to fellow humans”); Story Hinckley, *Delaware Formally Apologizes for Slavery: Empty Gesture or Step Toward Healing?*, CHRISTIAN SCI. MONITOR (Feb. 10, 2016), <https://www.csmonitor.com/USA/Society/2016/0210/Delaware-formally-apologizes-for-slavery-empty-gesture-or-step-toward-healing> (listing states that have apologized for slavery).

³⁴⁸ See Lewis, *supra* note 339. Localized efforts to examine and provide reparations to compensate Black Americans for the legacy of slavery have recently gained traction, however. See, e.g., *infra* notes 578–80 and accompanying text (discussing reparations provided to Black residents of Evanston, Illinois, for housing discrimination); *California Moves to Return Seized Beach to Black Couple’s Descendants*, CBS NEWS (Sept. 10, 2021), <https://www.cbsnews.com/news/bruces-beach-california-return-seized-property-black-couples-descendants/>; *AB 3121: Task Force to Study and Develop Reparation Proposals for African Americans*, STATE OF CAL. DEP’T OF JUST., <https://oag.ca.gov/ab3121> (last visited Oct. 15, 2021).

³⁴⁹ See DARITY & MULLEN, *supra* note 243, at 9–27 (discussing the history of the reparations movement); Coates, *supra* note 335 (same).

³⁵⁰ See, e.g., DARITY & MULLEN, *supra* note 243; BROOKS, *supra* note 330; Coates, *supra* note 335; Commission to Study and Develop Reparations Proposals for African Americans Act, H.R. 40, 116th Cong. (2019).

³⁵¹ See, e.g., DARITY & MULLEN, *supra* note 243, at 207 (noting that “the indignities and atrocities heaped upon Black people after slavery provides at least as strong a case for Black reparations as slavery itself”); Coates, *supra* note 335.

³⁵² See *supra* Section II.A.

Florida, sought compensation from the state of Florida for the damages they had suffered at the hands of a mob enabled and assisted by local law enforcement.³⁵³ As a result of their efforts, in 1994 the Florida legislature passed the Rosewood Compensation Act, which provided direct and indirect compensation to families affected by the violence.³⁵⁴ Direct survivors were entitled to payments of \$150,000 each.³⁵⁵ In addition, eligible families could receive from \$20,000 to 100,000 for documented property damages.³⁵⁶ Finally, the Act created the Rosewood Family Scholarship Fund for minority students, with preference given to Rosewood descendants.³⁵⁷ In total, nine people were directly compensated under the Act,³⁵⁸ and, as of 2020, 297 students had received college scholarships under the Rosewood Fund.³⁵⁹

The Rosewood Compensation Act came to fruition in the face of considerable political opposition. Many legislators argued that Florida taxpayers should not pay “damages for injuries which they had no part in causing.”³⁶⁰ Perhaps even more importantly, members of the Florida legislature and others argued that reparations for Rosewood would set a dangerous precedent, opening a “Pandora’s Box” of claims against the state based on past social injustices.³⁶¹ Perhaps it should have, given that Florida “has an abysmal record of mass white terror directed toward

³⁵³ See Joe R. Feagin, *Documenting the Costs of Slavery, Segregation, and Contemporary Racism: Why Reparations Are in Order for African Americans*, 20 HARV. BLACKLETTER L.J. 49, 72–73 (2004) (discussing reparations for the victims of Rosewood). The claimants in this case were either “former residents or descendants of former residents of Rosewood.” C. Jeanne Bassett, Comment, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 FLA. ST. UNIV. L. REV. 503, 508 (1994).

³⁵⁴ The compensation was provided pursuant to House Bill 591, which constituted a “claim bill” under Florida law. A “claim bill” “seeks compensation for a person injured by an act or omission of the state, its subdivisions, agencies, officers, or employees, when there is no other available remedy.” Bassett, *supra* note 353, at 504; *see id.* at 504–505 (explaining the claim bill process). The Act was passed and signed into law by Democratic Governor Lawton Chiles on May 4, 1994. *Id.* at 520.

³⁵⁵ *Id.* at 517–18.

³⁵⁶ *Id.* at 517.

³⁵⁷ *Id.* at 518.

³⁵⁸ Robert Samuels, *After Reparations: How a Scholarship Helped — and Didn’t Help — Descendants of Victims of the 1923 Rosewood Racial Massacre*, WASH. POST (Apr. 3, 2020), <https://www.washingtonpost.com/graphics/2020/national/rosewood-reparations/>.

³⁵⁹ *Id.*

³⁶⁰ Bassett, *supra* note 353, at 509.

³⁶¹ *Id.* at 509 n.60 (quoting State Sen. Charles Williams).

Blacks,” which did not begin or end in Rosewood.³⁶² To date, however, the Rosewood Compensation Act remains an outlier, as Florida and other states have successfully resisted further efforts to compensate victims of state-sanctioned racial violence.³⁶³

As noted above, the most infamous example of systemic racial violence in the United States was unleashed against the Black community in the Greenwood District of Tulsa, Oklahoma, on May 31, 1921.³⁶⁴ Tulsa was perhaps the most prosperous Black community in the United States when it was devastated by the massacre.³⁶⁵ Three years after Florida issued reparations to the victims of Rosewood, the Oklahoma legislature appointed the Oklahoma Commission to Study the Tulsa Riot of 1921 (the “Tulsa Commission”).³⁶⁶ However, unlike the victims of Rosewood, the survivors and descendants of the Tulsa Massacre of 1921 have yet to receive direct reparations from any branch of government, despite over twenty years of litigation and advocacy seeking them.³⁶⁷

The Tulsa Commission, composed of key leaders of the state and local government, issued a detailed final report, including recommendations for reparative justice, in February 2001.³⁶⁸ The Commission identified 118 living survivors of the Tulsa Massacre and an additional 176 descendants of victims.³⁶⁹ It further determined that Tulsans, “some of them agents of government,” burned or otherwise destroyed over 1,200 homes and “virtually every other structure” in the Greenwood District in 1921.³⁷⁰ The report concluded that “no government at any level” fulfilled its duty to “preserve order and to protect property” in Greenwood in May 1921, and instead offered inadequate resistance, “if any at all,” to those bent on destroying the Black community.³⁷¹ As a

³⁶² DARITY & MULLEN, *supra* note 243, at 16.

³⁶³ *Id.* at 24. *But see supra* note 348.

³⁶⁴ *See supra* note 250 and accompanying text.

³⁶⁵ DeNeen L. Brown, ‘We Lived Like We Were Wall Street’, WASH. POST (Oct. 11, 2018), <https://www.washingtonpost.com/history/2018/10/11/we-lived-like-we-were-wall-street/>.

³⁶⁶ DARITY & MULLEN, *supra* note 243, at 16, 18.

³⁶⁷ *See infra* text accompanying notes 373–78.

³⁶⁸ *See* OKLA. COMM’N TO STUDY THE TULSA RACE RIOT OF 1921, TULSA RACE RIOT, at ii (2001), <https://www.okhistory.org/research/forms/freport.pdf> [hereinafter TULSA REPORT]. The members of the commission included the Oklahoma governor, the leaders of the state House and Senate, the mayor of Tulsa, and the members of the Tulsa City Council. *Id.*

³⁶⁹ *Id.* at 6.

³⁷⁰ *Id.* at 12.

³⁷¹ *Id.*

result, the commission recommended five forms of restitution to the victims of Tulsa:

- (1) Direct payment of reparations to survivors of the Tulsa Race Riot.
- (2) Direct payment of reparations to descendants of the survivors of the Tulsa Race Riot.
- (3) A scholarship fund available to students affected by the Tulsa Race Riot.
- (4) Establishment of an economic development enterprise zone in the historic area of the Greenwood District.
- (5) A memorial for the reburial of any human remains found in the search for unmarked graves of riot victims.³⁷²

As of May 31, 2021, the 100th anniversary of the Tulsa Race Massacre, no governmental entity has paid any monetary restitution to the survivors and victims of the Tulsa Massacre or their descendants.³⁷³ Although some progress has been made regarding other recommendations from the Tulsa Commission,³⁷⁴ relatively little public money has been devoted to achieving restorative justice.³⁷⁵ Efforts to obtain reparations from the state of Oklahoma and the City of Tulsa via class action lawsuits have likewise failed, at least to date.³⁷⁶ By May 31, 2021, the 118 survivors

³⁷² *Id.* at 21–22 (directed to Gov. Frank Keating, Feb. 7, 2000).

³⁷³ See Dreisen Heath, *The Case for Reparations in Tulsa, Oklahoma: A Human Rights Argument*, HUMAN RIGHTS WATCH (May 29, 2020, 8:00 AM), <https://www.hrw.org/news/2020/05/29/case-reparations-tulsa-oklahoma> (noting that “[n]one of the legislation [passed in response to the Tulsa Report] provided financial compensation to survivors or descendants of survivors of the massacre”); see also DeNeen L. Brown, *Reparations Bill for Tulsa Race Massacre Survivors Introduced in Congress*, WASH. POST (May 21, 2021, 5:50 PM), <https://www.washingtonpost.com/history/2021/05/21/tulsa-massacre-reparations-bill/>.

³⁷⁴ The State of Oklahoma established a scholarship fund, the Tulsa Reconciliation Scholarship Program, available to students attending public high schools in Tulsa. The Program provides eligible students with a one-time grant of \$1,000, which can be used at any Oklahoma college or vocational training center. See OKLA. STAT. ANN. tit. 70, § 2621 (West 2021); see also Tulsa Reconciliation Scholarship Program Nomination Form for 2020-21, <https://resources.finalsite.net/images/v1583442482/tulsaschoolsorg/zco82xcpndsowwggqd7a/TulsaReconciliationScholarshipNominationForm.pdf>.

³⁷⁵ See Heath, *supra* note 373 (noting that “little public money has been appropriated to maintain” various entities created by the Oklahoma legislature to carry out recommendations of the Commission).

³⁷⁶ See *Alexander v. Oklahoma*, 382 F.3d 1206, 1211 (10th Cir. 2004) (affirming dismissal of plaintiffs’ complaint on statute of limitations grounds); *Alexander v. Oklahoma*, 544 U.S. 1044 (2005) (denying writ of certiorari). *But see Alexander v. Oklahoma*, 391 F.3d 1155, 1161 (10th Cir. 2004) (Lucero & Seymore, JJ., dissenting) (arguing in favor of applying the doctrine of

of the massacre who were alive when the Tulsa Commission issued its final report had dwindled to just three.³⁷⁷ One of the three survivors, 106-year-old Lessie Randall (“Mother Randle”), testifying before Congress, observed,

America is full of examples where people in positions of power, many just like you, have told us to wait. Others have told us it’s too late. It seems like justice in America is always so slow or not possible for Blacks. And we are made to feel crazy just for asking for things to be made right. There are always so many excuses for why justice is so slow or never happens at all.³⁷⁸

IV. ACHIEVING RESTORATIVE JUSTICE IN WILMINGTON

Over twenty years ago, North Carolina took the first steps in the long journey towards restorative justice in Wilmington.³⁷⁹ The 1898

equitable tolling to plaintiffs’ claims). Another lawsuit was filed in 2020 on behalf of one survivor and multiple descendants of Tulsa victims, under a nuisance theory designed to avoid a statute of limitations bar. *See* Complaint at 3, 5–6, *Randle v. City of Tulsa*, No. CV-2020-01179 (Okla. Dist. Ct., Sept. 1, 2020), <https://www.documentcloud.org/documents/7199572-Tulsa-Massacre-Lawsuit.html>; Brakkton Booker, *Oklahoma Lawsuit Seeks Reparations in Connection to 1921 Tulsa Massacre*, NPR (Sept. 3, 2020, 1:47 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/03/909151983/oklahoma-lawsuit-seeks-reparations-in-connection-to-1921-tulsa-massacre>; Maria Cramer, *Tulsa Massacre Survivors Sue City Nearly 100 Years After Attack*, N.Y. TIMES (Sept. 1, 2020) <https://www.nytimes.com/2020/09/01/us/tulsa-race-massacre-lawsuit.html>.

³⁷⁷ *See Continuing Injustice: The Centennial of the Tulsa-Greenwood Race Massacre, Before House Judiciary Comm., Subcomm. on the Const., C.R. and C.L.*, 107th Cong. (2021) (testimony by three remaining survivors of Tulsa Race Massacre), <https://docs.house.gov/meetings/JU/JU10/20210519/112648/HHRG-117-JU10-WList-20210519.pdf>. The remaining survivors are Viola Fletcher (age 107), Hughes Van Ellis (age 100), and Lessie Benningfield Randle (age 106). *See id.*; *see also* Chief Egunwale Amusan, *The Tulsa Race Massacre Was 100 Years Ago. But It’s Not Too Late to Pay Reparations.*, NBCNEWS (June 1, 2021, 4:30 AM), <https://www.nbcnews.com/think/opinion/tulsa-race-massacre-was-100-years-ago-it-s-not-ncna1269035>; Keisha N. Blaine, *Tulsa Race Massacre Victims are Fighting for Reparations, 100 Years Later*, MSNBC (May 31, 2021, 9:16 AM), <https://www.msnbc.com/opinion/tulsa-race-massacre-survivors-are-fighting-reparations-100-years-later-n1268891>.

³⁷⁸ *Continuing Injustice: The Centennial of the Tulsa-Greenwood Race Massacre: Hearing Before the H. Subcomm. on the Const., C.R. & C.L.* (2021) (written statement of Lessie Evelyn Benningfield “Mother” Randle), <https://docs.house.gov/meetings/JU/JU10/20210519/112648/HHRG-117-JU10-Wstate-BenningfieldRandleL-20210519.pdf>.

³⁷⁹ *See infra* Section III.A. The mission of the 1898 Wilmington Race Riot Commission was not framed as a quest for restorative justice. However, the Commission’s work and its recommendations can fairly be interpreted as contributions towards that end.

Wilmington Race Riot Commission (the “Commission”) began its work in 2000 and, six years later, issued a comprehensive report, casting a bright light on the history of 1898 that the state had concealed for decades.³⁸⁰ The Commission’s 464-page report provides an exhaustive history of the events of 1898 and recommends a path forward.³⁸¹ The Commission’s conclusions can be interpreted as recommendations for both victim-directed (compensatory) and community-directed (rehabilitative) reparations, both of which may be used to achieve restorative justice.³⁸² Although some of the Commission’s proposals have been partially accomplished since that time, that progress has often been achieved despite governmental institutions rather than because of them, especially in key areas such as voting rights and education.³⁸³ Many of the Commission’s most important recommendations, especially those requiring funding from the federal, state, or local government, have lain dormant since the report was issued in 2006.³⁸⁴

A. The 1898 Wilmington Race Riot Commission and Report

The 100th anniversary of the Wilmington Race Massacre and Coup occurred in November 1998. Soon thereafter, two state politicians from Wilmington, Sen. Luther H. Jordan³⁸⁵ and Rep. Thomas E. Wright, launched efforts to have the State of North Carolina formally investigate what happened in Wilmington in 1898, modeled after studies undertaken by the States of Florida and Oklahoma regarding Rosewood and Tulsa,

³⁸⁰ See *infra* text accompanying notes 387–400.

³⁸¹ See WILMINGTON REPORT, *supra* note 46.

³⁸² See BROOKS, *supra* note 330, at 156 (defining and distinguishing between victim-directed and community-directed reparations). The restorative justice model encompasses both forms of reparation, although the emphasis is on proactive, community-building efforts (80%), accompanied by more reactive measures designed to repair past harms (20%). See *A Brief History of Restorative Practices*, AMHERST COLL., <https://actv.amherst.edu/offices/restorative-practices/history-of-restorative-practices> (last visited Oct. 15, 2021).

³⁸³ See, e.g., *infra* text accompanying notes 443–62 & 506–23 (discussing the regression of voting rights and educational opportunity for Black North Carolinians, especially in Wilmington).

³⁸⁴ For example, the Commission recommended the creation of a Restructuring and Development Authority for Wilmington, supported by a government-funded endowment, but no such entity was ever created. See *infra* text accompanying notes 416–17.

³⁸⁵ Sen. Jordan died in 2002, before the Commission issued its final Report. See S.J. Res. 1470, 2001 Gen. Assemb. (N.C. 2002).

respectively.³⁸⁶ As a result, the North Carolina General Assembly passed a law in 2000 entitled the 1898 Wilmington Race Riot Commission Bill, authorizing the creation of a commission to “examine the riot and to develop a historical record,” and further to assess the “economic impact of the riot on African-Americans in this State.”³⁸⁷ The Commission, which was composed of thirteen representatives from Wilmington and elsewhere in North Carolina,³⁸⁸ issued its final report on May 31, 2006 (the “Report”).³⁸⁹ The Report includes a detailed history of the events of 1898, findings of fact, and a list of recommendations designed to “seek to repair the moral, economic, civic, and political damage wrought by the violence and discrimination resulting from a conspiracy to re-take control of city, county, and state government by the Democratic Party’s white supremacy campaign.”³⁹⁰ The Report urges “government leadership at all levels” to “pursue actions that repair the wrong” done to those injured by a “conspiracy of a white elite that used intimidation and force to replace a duly elected local government.”³⁹¹ The following section tracks the Commission’s recommendations and assesses whether and to what extent they have been accomplished in the fifteen years since the issuance of the Report.

1. Acknowledgement and Commemoration

Under the heading of “Empowerment,” the Report sought an official acknowledgement of the extent and the source of the harm done to the Black community in Wilmington by the coup, and a recognition that “governments at all levels failed to protect its citizens.”³⁹² This goal has been partly accomplished.

The Report itself constitutes a form of acknowledgement of the harms done and the role that government played in inflicting them in

³⁸⁶ *Introduction*, in WILMINGTON REPORT, *supra* note 46; *see also supra* text accompanying notes 353–78 (discussing Rosewood and Tulsa).

³⁸⁷ *Introduction*, in WILMINGTON REPORT, *supra* note 46.

³⁸⁸ The co-chairs of the Commission were state legislators Rep. Thomas E. Wright and Sen. Julia Boseman; the vice-chairman of the committee was Prof. Irving Joyner from N.C. Central University School of Law in Durham, North Carolina. *See id.* (listing all members). Rep. Wright is the brother of Joe Wright, a member of the Wilmington Ten. *See Steelman*, *supra* note 235.

³⁸⁹ *Steelman*, *supra* note 235.

³⁹⁰ *Recommendations*, in WILMINGTON REPORT, *supra* note 46; *see also Findings*, in WILMINGTON REPORT, *supra* note 46.

³⁹¹ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

³⁹² *Id.*

1898.³⁹³ After the Report was published in 2006, the North Carolina state government issued a resolution that acknowledged the Commission's findings and expressed "regret that violence, intimidation, and force were used to replace a duly elected local government, that people lost their livelihoods and were forced to leave their homes, and that the government was unsuccessful in protecting its citizens during that time."³⁹⁴ The resolution fell short of a true apology and, while it "acknowledged" the Commission's findings, it did not adopt them or fully accept responsibility for the State's role in perpetrating the massacre. The state Democratic Party officially apologized for its role in effectuating the coup in 2007.³⁹⁵ More recently, the state Democratic Party has officially stated its support for payment of reparations to survivors of the 1898 Massacre and Coup.³⁹⁶ Its support, however, has not translated into statewide action.

The Report also recommends that state and local governments commemorate the events of 1898, in addition to admitting that they occurred, to better educate North Carolina citizens and the world regarding this critical event in local, state, and national history.³⁹⁷ The Report recommends that the government erect "plaques, markers and/or monuments to identify key participants and locations of 1898 events statewide and in Wilmington."³⁹⁸ When the Commission was first convened in 1998, only one marker memorialized the events of 1898 in Wilmington: a plaque dedicated to Alexander Manly, which notes that a "mob" burned his office on November 10, 1898, but does not mention that a White supremacist coup deposed Wilmington's democratically elected

³⁹³ See generally *id.* at 14 (detailing contents of the report and the government's role in the harms caused).

³⁹⁴ S.J. Res. 1572, 2007 Gen. Assemb. (N.C. 2007) (acknowledging the findings of the 1898 Wilmington Race Riot Commission).

³⁹⁵ See Catherine Welch & Megan Williams, *NC Dems Apologize for Role in 1898 Riot*, WHQR (Jan. 20, 2007, 6:06 AM), <https://www.whqr.org/local/2007-01-20/nc-dems-apologize-for-role-in-1898-riot>. In the party resolution, the Democrats acknowledged and renounced the "actions of past Party leaders involved in the events of 1898 and those actions' impact on the State of North Carolina and the United States of America," and apologized to the victims. *Id.*

³⁹⁶ See, e.g., Gareth McGrath, *N.C. Democratic Party Apologizes Over 1898 Race Massacre*, STAR NEWS ONLINE (Nov. 24, 2014, 5:21 PM), <https://www.starnewsonline.com/article/NC/20141124/News/605048701/WM>. In this resolution, the state party affirmed its belief that "true healing of our traumatized community cannot begin without compensating the descendants of the victims of the 1898 massacre." *Id.*

³⁹⁷ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

³⁹⁸ *Id.*

government on the same day.³⁹⁹ More recently, over a decade after the Commission issued the Report, a more complete and accurate state marker was installed, labeled “Wilmington Coup.”⁴⁰⁰ Public pressure has also resulted in the renaming of public spaces in Wilmington that, for decades, had honored the perpetrators of the coup, such as Hugh MacRae Park (now Long Leaf Park).⁴⁰¹

Shortly after the Commission issued its Report, in November 2008, the 1898 Memorial Park was dedicated in Wilmington.⁴⁰² The Memorial Park is located just one block from the site of the first murder of a Black person in Wilmington on November 10, 1898.⁴⁰³ The park features artwork by Prof. Ayokunle Odeleye, a series of six, 16-foot African paddles

³⁹⁹ ZUCCHINO, *supra* note 31, at 348. In its entirety, the plaque reads, “Alex Manly, 1866–1944. Edited black-owned Daily Record four blocks east. Mob burned his office Nov. 10, 1898, leading to ‘race riot’ [and] restrictions on black voting in N.C.” *Id.*

⁴⁰⁰ *Id.* The marker reads as follows:

Armed white mob met at armory here, Nov. 10, 1898. Marched six blocks and burned office of Daily Record, Black-owned newspaper. Violence left untold numbers of African-Americans dead. Led to overthrow of city government & installation of coup leader as mayor. Was part of a statewide political campaign based on calls for white supremacy and the exploitation of racial prejudice.

Id.; see also Hunter Ingram, ‘*This Is A Long Time Coming*’: 1898 Coup Gets Historic Marker, STARNEWS ONLINE (Nov. 8, 2019, 3:23 PM), <https://www.starnewsonline.com/news/20191108/this-is-long-time-coming-1898-coup-gets-historic-marker>.

⁴⁰¹ Frances Weller, *Hugh MacRae Park Name Change to Take Place Immediately, Signs Removed*, WECT NEWS 6 (July 14, 2020), <https://www.wect.com/2020/07/13/commissioners-vote-rename-hugh-macrae-park/> (discussing the 3-2 decision of the New Hanover County Commissioners to change the name of the park). MacRae was one of the key instigators of the coup and White supremacy campaign in 1898. See *supra* note 289. MacRae and his wife also donated the land for the park on the condition that it be used by White people only, a restriction that was officially removed by his heirs in 1980. See Weller, *supra* note 401; see also *infra* note 605 and accompanying text (discussing similar naming controversies at UNC).

⁴⁰² *The 1898 Memorial Dedication, 1898 FOUND.*, <https://library.uncw.edu/web/collections/1898Foundation/1898-thememorial.html> (last visited Aug. 16, 2021); ZUCCHINO, *supra* note 31, at 342 (discussing the park).

⁴⁰³ ZUCCHINO, *supra* note 31, at 342. More recently, in June 2021, UNC–Wilmington commissioned the sculptor, Dare Coulter, to create a piece of art entitled *Because It’s Time*, incorporating “symbolic images of Wilmington’s history, the Gullah Geechee culture, recent [racial justice] protests and references to the massacre of 1898.” See University of North Carolina Wilmington News, “*Because It’s Time*” Public Artwork Honors Black Lives in Wilmington (June 18, 2021), <https://uncw.edu/news/2021/06/because-its-time-public-artwork-honors-black-lives-in-wilmington.html>. This artwork is now displayed on the UNC – Wilmington campus. *Id.*

symbolizing “water, movement, and wholeness.”⁴⁰⁴ Inscriptions built into the monument tell the story of 1898, concluding that “Wilmington’s 1898 racial violence . . . began a successful statewide Democratic campaign to regain control of state government, disenfranchise African Americans, and create a system of legal segregation which persisted into the second half of the 20th Century.”⁴⁰⁵ The Memorial Park was funded by the 1898 Foundation, a non-profit organization that was dissolved after the park was completed, in early 2009.⁴⁰⁶

The Report also calls for additional government funding to be provided to the Cape Fear Museum and the New Hanover County Library to create an exhibit and make other resources available regarding the events of 1898.⁴⁰⁷ In August 2020, almost fifteen years after the issuance of the Report, the Museum and the County Library, together with the New Hanover Information Technology Department, collaborated to create a digitized map and timeline “documenting the events of 1898 in Wilmington.”⁴⁰⁸ The digitized exhibit is interactive and can be accessed by anyone from anywhere, opening these collections to historians or anyone else interested in further researching Wilmington in 1898.⁴⁰⁹ Both the University of North Carolina at Chapel Hill (“UNC”) and the University of North Carolina at Wilmington (“UNC-W”) have also assembled an extensive array of both primary and secondary sources

⁴⁰⁴ *Selecting and Creating the Monument*, 1898 FOUND., <https://library.uncw.edu/web/collections/1898Foundation/1898-thememorial.html> (last visited Aug. 16, 2021); *About Ayokunle Odeleye*, 1898 FOUND., <https://library.uncw.edu/web/collections/1898Foundation/1898-thememorial.html> (last visited Aug. 16, 2021).

⁴⁰⁵ *See 1898 Monument and Memorial Park, Wilmington, U.N.C.: DOCUMENTING THE AMERICAN SOUTH*, <https://docsouth.unc.edu/commland/monument/842/> (last visited Aug. 9, 2021) (describing the park and monument).

⁴⁰⁶ *Wrap Up*, 1898 FOUND., <https://library.uncw.edu/web/collections/1898Foundation/1898-thefoundation.html> (last visited Aug. 13, 2021).

⁴⁰⁷ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁰⁸ *New Hanover County Creates Online 1898 History Resource*, NEW HANOVER CNTY.: COMMUNIS & OUTREACH (Aug. 17, 2020), <https://news.nhcgov.com/news-releases/2020/08/new-hanover-county-creates-online-1898-history-resource/>. For the map and related source materials, *see Wilmington Massacre and Coup D’état of 1898 - Timeline of Events*, NEW HANOVER CNTY., <https://nhcgov.maps.arcgis.com/apps/MapJournal/index.html?appid=5a4f5757e4904fb8bef6db842c1ff7c3> (last visited Aug. 13, 2021).

⁴⁰⁹ *Wilmington Massacre and Coup D’état of 1898 - Timeline of Events*, *supra* note 408.

relating to the events of 1898, some of which are available on line in a digitized format.⁴¹⁰

Most recently, the New Hanover County Community Remembrance Project (the “Project”) is planning to memorialize the members of Wilmington’s Black community who were killed on November 10, 1898, in a ceremony to take place in early November 2021.⁴¹¹ The Project is not supported by any governmental entity and has launched a GoFundMe campaign to pay for this event, which has raised around \$5,900 to date.⁴¹² The commemoration of 1898 will be part of the Community Soil Collection Project sponsored by the Equal Justice Initiative (“E.J.I.”), based in Montgomery, Alabama.⁴¹³ E.J.I. supports efforts to collect soil samples from places like Wilmington that have been the site of lynchings and other forms of racial violence.⁴¹⁴ Soil samples from Wilmington—taken from locations in the city where Black people were murdered on November 10, 1898—will be displayed at public facilities in New Hanover County and at the National Memorial for Peace and Justice in Montgomery.⁴¹⁵

The State of North Carolina funded and published a thorough history documenting the Wilmington Massacre and Coup in 2006. In doing so, it

⁴¹⁰ *Researching the Wilmington 1898 Massacre and Coup: Home*, UNC: U. LIBRS., <https://guides.lib.unc.edu/wilmington-1898/home> (last visited Oct. 13, 2021); *The Wilmington Coup D'état of 1898*, UNIV. N.C. WILMINGTON, https://library.uncw.edu/guides/the_wilmington_coup_d_tat_of_1898 (last updated Nov. 12, 2021).

⁴¹¹ See Jonathan Haynes, *Project Raising Money to Honor Victims of the 1898 Wilmington Coup*, WILMINGTON STARNEWS (Oct. 5, 2020), <https://www.starnewsonline.com/story/news/2020/10/04/1898-wilmington-coup-project-raising-money-honor-victims/3598089001/>. The Project is supported by a coalition of local civil rights groups, including the 1898 Observance Committee, Cape Fear Collective, LINC Inc., the New Hanover County NAACP, Wilmington’s local chapter of Coming to the Table, and the Restorative Justice Collaborative at UNC-Wilmington. *Id.* The date of the ceremony was originally scheduled for November 2020 but was postponed due to the COVID-19 pandemic. See Interview with Jim Downey, Equal Just. Initiative, in Wilmington, N.C. (May 21, 2021).

⁴¹² *New Hanover County Community Remembrance Project*, GOFUNDME (Aug. 31, 2020), https://www.gofundme.com/f/mhruv-new-hanover-county-community-remembrance-project?utm_source=customer&utm_campaign=p_cp+share-sheet&utm_medium=copylinkall.

⁴¹³ See Interview with Jim Downey, *supra* note 411.

⁴¹⁴ See *Community Remembrance Project*, EQUAL JUST. INITIATIVE, <https://eji.org/projects/community-remembrance-project/> (last visited Aug. 15, 2021).

⁴¹⁵ See Haynes, *supra* note 411; *The National Memorial for Peace and Justice*, EQUAL JUST. INITIATIVE, <https://museumandmemorial.eji.org/memorial> (last visited Aug. 15, 2021) (explaining the soil collection process).

took a critical initial step towards healing the wounds inflicted on this community in 1898. However, the state and local governments have not fully acknowledged their complicity in these atrocities and ongoing responsibility to repair the damage done. Their failure to do so explains why so little progress has been made on many other recommendations in the Report.

2. The Restructuring and Development Authority for Wilmington

The second aim of the Commission's recommendations for Empowerment was the establishment of a Restructuring and Development Authority for Wilmington (the "Authority"), supported by an endowment funded by government and private businesses.⁴¹⁶ The purpose of the Authority is spelled out in the Commission's recommendations for Economic Redevelopment.⁴¹⁷ The Commission envisioned that the Authority would use its endowment for three main purposes: (1) to support the compensation of "heirs of victims who can prove loss and relationship to victims via intestacy statutes"; (2) to incentivize business development in areas of the Wilmington community impacted by the 1898 Massacre, using tools such as the establishment of an "enterprise zone" and the creation of a "small business incubator with tax incentives to attract minority-owned businesses"; and (3) to "increase minority home ownership in impacted areas," potentially through use of the power of eminent domain.⁴¹⁸ None of these aims have come to fruition, as the North Carolina legislature has neither funded an endowment to create the proposed Authority, nor taken any steps to do so.

The Report's goal of creating an "enterprise zone" in areas of Wilmington directly impacted by the coup was recently embraced by local entrepreneurs Tracey and Girard Newkirk, who established Genesis Block in downtown Wilmington in 2018.⁴¹⁹ Genesis Block is a private, nonprofit "small business incubator" where businesses may rent space, collaborate, and access support services, including an Entrepreneurs Academy.⁴²⁰ Genesis Block aims to create 400 jobs and \$13 million investment in the

⁴¹⁶ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴¹⁷ *See id.*

⁴¹⁸ *Id.*

⁴¹⁹ *See About Genesis Block*, GENESIS BLOCK, <https://genesisblockilm.com/about/> (last visited Aug. 15, 2021). Genesis Block became a non-profit corporation in 2020. *Genesis Block Foundation, Inc.*, OPENCORPORATES, <https://opencorporates.com/companies/usnc/2029211> (last visited Aug. 15, 2021).

⁴²⁰ *See About Genesis Block*, *supra* note 419.

Wilmington community.⁴²¹ To date, Genesis Block has sought to achieve this ambitious goal with limited government funding. The City of Wilmington recently proposed allocating \$25,000 to Genesis Block in its annual city budget (out of a total budget of approximately \$240 million), to “help with programs that work toward economic opportunities for minorities, women and underserved segments of the community as it relates to entrepreneurship and small business growth.”⁴²²

Some governmental efforts have been recently made to incentivize business development in Wilmington (although not in response to the 1898 Report). Federal tax incentives linked to the Opportunity Zone program may eventually impact Wilmington, although the program—which was authorized under the 2017 Tax Cuts and Jobs Act—has yet to yield new investment.⁴²³ In 2019 and 2020, New Hanover County initiated new programs to increase economic opportunity for women and minorities. In November 2019 it established the Minority and Women Business Enterprise Program (“MWBE”), designed to improve awareness and opportunities for women and minority-owned businesses to enter procurement and service contracts with the county.⁴²⁴ County staff involved in purchasing are encouraged to make a “good faith effort” to use MWBE vendors.⁴²⁵ In 2020, approximately 200 minority and women-

⁴²¹ Johanna Cano, *Genesis Block Receives Grant to Support Black Entrepreneurship*, WILMINGTONBIZ (Dec. 15, 2020), http://www.wilmingtonbiz.com/entrepreneurs/2020/12/15/genesis_block_receives_grant_to_support_black_entrepreneurship/21275.

⁴²² CITY OF WILMINGTON, N.C., FISCAL YEAR 2022 RECOMMENDED BUDGET 27 (2020), <https://www.wilmingtonnc.gov/home/showpublisheddocument/13354/637558038036930000>. Genesis Block also received a \$50,000 grant from a private nonprofit foundation, North Carolina IDEA, and a related group, the North Carolina Black Entrepreneurship Council, in 2020. Cano, *supra* note 421.

⁴²³ See *North Carolina Opportunity Zones Program*, N.C. DEP’T OF COM., <https://public.nccommerce.com/oz/> (last visited Aug. 15, 2021); Emily Featherston, *Opportunity Zones: Wilmington Explores Potential Benefits*, WECT, <https://www.wect.com/2019/07/17/opportunity-zones-wilmington-explores-potential-benefits-hopes-connect-investors-projects/> (last updated July 18, 2019, 6:28 PM); Rachel Keith, *Local Opportunity Zones Could Offer Tax Credits*, WHQR (Feb. 11, 2020, 1:55 PM), <https://www.whqr.org/local/2020-02-11/local-opportunity-zones-could-offer-tax-credits>.

⁴²⁴ *Minority & Women Business Enterprise Program*, NEW HANOVER CNTY. FIN., <https://finance.nhcgov.com/purchasing-solicitation/minority-women-business-enterprise-program/> (last visited Aug. 20, 2021).

⁴²⁵ *Id.*

owned businesses were listed on the County's MWBE vendor registry.⁴²⁶ The County spent about \$15 million on contracts with these vendors in 2020, which represented a significant increase over the previous year.⁴²⁷ Ultimately, the County hopes to target 10% of its purchasing budget towards MWBE's.⁴²⁸ In June of 2020, New Hanover County took a further step by establishing an Office of Diversity and Equity "to promote an inclusive and fair work environment" in the County.⁴²⁹ Whether these programs will yield significant results remains to be seen.

Meanwhile, the poverty rate in Wilmington remains stubbornly high, especially among its Black population. In 2019, the overall poverty rate in Wilmington was 22.2%, over twice the national average.⁴³⁰ The poverty rate for New Hanover County was slightly lower than the City of Wilmington, at 15.3%.⁴³¹ About a third of the Black people living in New Hanover County in 2019 were poor: twice the average rate of poverty for the County and 14% higher than the national poverty rate for Black Americans.⁴³² The poverty rate for Black people living in Wilmington in 2019 was even higher: 40.8%.⁴³³ The poverty rate tends to indicate that economic issues plaguing the Black community in Wilmington have not significantly improved since the 1898 Commission issued the Report.

⁴²⁶ THE NEW HANOVER CNTY. OFF. OF DIVERSITY & EQUITY, 120-DAY ASSESSMENT REPORT (AUG. 25–DEC. 25, 2020) 16, <https://diversity.nhcgov.com/de-assessment-report/> [hereinafter *120-Day Assessment*].

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Diversity, Equity and Inclusion Policy*, NEW HANOVER CNTY. OFF. OF DIVERSITY & EQUITY, <https://diversity.nhcgov.com/about-us/diversity-equity-and-inclusion-policy/> (last visited Aug. 20, 2021). The policy adds that the office will be expected to produce "data-driven recommendations that identify and implement objectives and measures related to diversity and equity." *Id.*

⁴³⁰ JESSICA SEMEGA ET AL., INCOME AND POVERTY IN THE UNITED STATES: 2019, U.S. CENSUS BUREAU 1 (2020) <https://www.census.gov/library/publications/2020/demo/p60-270.html>, (reflecting the national poverty rate for 2019 of 10.5%); *QuickFacts: Wilmington City, N.C.*, U.S. CENSUS BUREAU (Sep. 15, 2020), <https://www.census.gov/quickfacts/wilmingtoncitynorthcarolina> (reflecting a poverty rate of 22.2% for Wilmington).

⁴³¹ *120-Day Assessment*, *supra* note 426, at 4 (based on United States Census 2018 ACS 5-Year Survey).

⁴³² *Id.* (reflecting a Black poverty rate of 33.26%); SEMEGA, *supra* note 430, at 15 (reflecting a Black poverty rate of 18.8%).

⁴³³ *Wilmington, N.C. Poverty Rate Data*, CITY-DATA.COM, <http://www.city-data.com/poverty/poverty-Wilmington-North-Carolina.html> (last visited Aug. 20, 2021).

Lack of affordable housing remains a critical issue in Wilmington as well. In July 2021, the website for the Wilmington Housing Authority (“WHA”) indicated that the waiting lists for all public housing and Housing Choice Voucher programs were “closed” with no information as to when they would reopen.⁴³⁴ According to a survey conducted by the WHA and the City of Wilmington in 2016, community members attribute this crisis to rising rents, stagnant wages, and housing discrimination.⁴³⁵ Seventy-four percent of the people surveyed believed that housing discrimination exists in Wilmington, and about 25% of them had personally experienced discrimination.⁴³⁶ Gentrification in some traditionally Black neighborhoods has also impacted access to affordable housing.⁴³⁷

In sum, the city, county, and state did not respond to the Commission’s recommendation in 2006 that they endow a fund to provide direct compensation to the heirs of the victims of the 1898 Massacre and Coup, or to promote economic development in the areas of Wilmington most directly impacted by the coup. The government has shown no interest in paying reparations to these individuals. Both the public and the private sector have recently made efforts to improve economic opportunities in Wilmington, especially for minority communities, but the scale of the effort appears insufficient to meet the need.

3. Repairing and Protecting Black Voting Rights

The Commission also sought to achieve empowerment through increased access to the ballot box for the people of Wilmington by adding New Hanover County to the list of areas requiring preclearance for changes to voting procedures under the federal Voting Rights Act.⁴³⁸ This recommendation has been thwarted by both the United States Supreme

⁴³⁴ *Housing Programs*, WILMINGTON HOUS. AUTH., http://www.wha.net/Housing_Programs/Housing_Programs.htm (last visited Aug. 20, 2021) (stating “[t]he HCV and Public Housing Waiting List are Closed.”).

⁴³⁵ CITY OF WILMINGTON, N.C. & WILMINGTON HOUS. AUTH., ASSESSMENT OF FAIR HOUSING 13–14 (2016), <https://www.wilmingtonnc.gov/home/showdocument?id=3433>.

⁴³⁶ *Id.* at 13.

⁴³⁷ See Hunter Ingram, *Racial Diversity in Wilmington’s Northside Leads to Friction, Opportunity*, STARNEWS ONLINE (July 6, 2019), <https://www.starnewsonline.com/news/20190706/racial-diversity-in-wilmingtons-northside-leads-to-friction-opportunity> (discussing these housing trends in Wilmington’s Northside neighborhood).

⁴³⁸ See WILMINGTON REPORT, *supra* note 46, at 7.

Court and the North Carolina state legislature. Seven years after the Report was issued, the Supreme Court struck down the sections of the Voting Rights Act that established preclearance procedures in *Shelby County v. Holder*.⁴³⁹ Prior to the Court's decision in *Shelby*, Sections 4 and 5 of the Voting Rights Act required certain states and additional counties (including forty counties in North Carolina) to obtain preclearance from the federal government before enacting laws creating "any voting qualification or prerequisite to voting" in that jurisdiction.⁴⁴⁰ The Court invalidated Section 4's preclearance criteria because it found they were insufficiently based on "current conditions," failing to reflect that "[o]ur country has changed," and therefore, infringed state sovereignty.⁴⁴¹ In dissent, Justice Ruth Bader Ginsburg pithily observed that "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."⁴⁴²

Black voters in the State of North Carolina—including those in Wilmington—have gotten drenched in the years following the Supreme Court's decision in *Shelby*. One day after the Supreme Court invalidated the preclearance requirements of the Voting Rights Act, Republican State Senator Tom Apodaca "announced an intention to enact . . . an 'omnibus' election law" which, a federal court later found, was intentionally designed to limit Black North Carolinians' access to the ballot box.⁴⁴³ Before

⁴³⁹ 570 U.S. 529, 556–57 (2013); see also James J. Sample, *The Decade of Democracy's Demise*, 69 AM. U. L. REV. 1559, 1592–602 (2020) (critiquing the majority opinion in *Shelby*).

⁴⁴⁰ Section 4 of the Voting Rights Act spelled out certain criteria designed to identify states and counties with a history of voter discrimination and suppression. Forty North Carolina counties met the Section 4 criteria requiring preclearance procedures. 28 C.F.R. app. § 51 (2016). Section 5 of the Act detailed the preclearance procedures required to approve changes to voter laws in states and counties that met the Section 4 criteria. See *Transcript of Voting Rights Act (1965)*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=100&page=transcript> (last visited Aug. 20, 2021) (setting forth the text of Sections 4 and 5, now repealed).

⁴⁴¹ *Shelby County*, 570 U.S. at 557 (2013).

⁴⁴² *Id.* at 590 (Ginsburg, J., dissenting).

⁴⁴³ N.C. State Conf. of NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016); see also William Wan, *Inside the Republican Creation of the North Carolina Voting Bill Dubbed the 'Monster' Law*, WASH. POST (Sept. 2, 2016), https://www.washingtonpost.com/politics/courts_law/inside-the-republican-creation-of-the-north-carolina-voting-bill-dubbed-the-monster-law/2016/09/01/79162398-6adf-11e6-8225-fbb8a6fc65bc_story.html; Jeremy Duda, *Supreme Court Ruling on Voting Rights Act Opens Floodgates for New Restrictions*, N.C. POL'Y WATCH (Oct. 7, 2020), [http://www.ncpolicywatch.com/2020/10/07/supreme-court-ruling-on-voting-rights-act-opened-](http://www.ncpolicywatch.com/2020/10/07/supreme-court-ruling-on-voting-rights-act-opened/)

enacting Session Law 2013-381 (“SL 2013-381”), the Republican-led state legislature “requested data on the use, by race, of a number of voting practices” that targeted Black voters “with almost surgical precision.”⁴⁴⁴ It then altered state election law to eliminate or curtail procedures regarding voting and voting registration that were disproportionately used by Black voters, in an intentional effort to decrease their political participation.⁴⁴⁵ The court found the legislature’s proffered justification for the law—primarily to curb “voter fraud”—imposed “cures for problems that did not exist.”⁴⁴⁶ The Fourth Circuit invalidated SL 2013-381 on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act.⁴⁴⁷

floodgates-for-new-restrictions/. Senator Apodaca referred to Section 5 of the Voting Rights Act as a “legal headache” that no longer stood in the way of the bill. Wan, *supra* note 443.

⁴⁴⁴ *McCrary*, 831 F.3d at 214. The court found that Republican legislators targeted Black voters because they tend to vote heavily in favor of the Democratic Party. The court reasoned that

intentionally targeting a particular race’s access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose. This is so even absent any evidence of race-based hatred and despite the obvious political dynamics. A state legislature acting on such a motivation engages in intentional racial discrimination in violation of the Fourteenth Amendment and the Voting Rights Act.

Id. at 222–23. Black voters in North Carolina and throughout the South tended to switch their political affiliation from Republican to Democrat in the 1960’s, as President Lyndon B. Johnson and the Democratic Party pushed the Civil Rights Act through Congress and supported the civil rights movement, and Republicans did the opposite. See Karen Grigsby Bates, *Why Did Black Voters Flee The Republican Party in the 1960s?*, NPR (July 14, 2014), <https://www.npr.org/sections/codeswitch/2014/07/14/331298996/why-did-black-voters-flee-the-republican-party-in-the-1960s>.

⁴⁴⁵ The relevant data “revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, and disproportionately lacked DMV-issued ID.” *McCrary*, 831 F.3d at 230 (citing findings of fact from the district court). The data also showed that “African Americans did not disproportionately use absentee voting; whites did.” *Id.* The legislature then “drastically restricted all of these other forms of access to the franchise but exempted absentee voting from the photo ID requirement.” *Id.*

⁴⁴⁶ *Id.* at 214, 235.

⁴⁴⁷ *Id.* at 238–39; *North Carolina v. N.C. State Conf. of NAACP*, 137 S. Ct. 1399, 1399 (2017) (denying cert.). Section 2 of the Voting Rights Act provides,

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color

52 U.S.C. § 10301(a) (2014) (formerly 42 U.S.C. § 1973(a)); see also U.S. CONST. AMEND. XIV, § 1. The Supreme Court recently held that Arizona state laws limiting voting rights did not

The judicial invalidation of SL 2013-381 did not end legislative attempts to impede Black voters' access to the ballot box in North Carolina. In November 2018, 55% of North Carolinians voted to amend their state constitution to require photo I.D. before voting, a key feature of SL 2013-381.⁴⁴⁸ The state legislature then passed enabling legislation, S.L. 2018-144, over Democratic Governor Roy Cooper's veto.⁴⁴⁹ In ruling on a request to enjoin implementation of the law while the case was pending, a federal district court found that the voter I.D. law was "impermissibly motivated, at least in part, by discriminatory intent."⁴⁵⁰ This ruling was reversed on appeal,⁴⁵¹ but an injunction issued in a similar state case was affirmed.⁴⁵² After a trial on the merits, a three-judge superior court panel held that S.L. 2018-144 violated the Equal Protection Clause of the North Carolina constitution, finding that the law "would not have been enacted in its current form but for its tendency to discriminate against African American voters."⁴⁵³ In the wake of the 2020 Presidential election, in which Donald J. Trump lost his bid for a second term (but claimed that he won on Election night), Republicans in the North Carolina state legislature have proposed additional laws that the Brennan Center for Justice characterizes as "voter suppression."⁴⁵⁴ These laws primarily make it more

violate Section 2 of the Voting Rights Act, finding that the state lacked discriminatory intent. *Brnovich v. Dem. Nat'l Comm.*, 141 S.Ct. 2321 (2021).

⁴⁴⁸ See *North Carolina Voter ID Amendment (2018)*, BALLOTPEDIA, https://ballotpedia.org/North_Carolina_Voter_ID_Amendment (last visited Aug. 20, 2021).

⁴⁴⁹ See *N.C. State Conf. of NAACP v. Cooper*, 430 F. Supp. 3d 15, 23 (M.D.N.C. 2019), *rev'd sub nom.* *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 299 (4th Cir. 2020) (summarizing legislative history of SL 2018-144).

⁴⁵⁰ *Cooper*, 430 F. Supp. 3d at 53; see also *Holmes v. Moore*, 840 S.E.2d 244, 264–65 (N.C. Ct. App. 2020) (finding that "discriminatory intent remained a primary motivating factor behind" the revised state voter I.D. law).

⁴⁵¹ *Raymond*, 981 F.3d at 298 (4th Cir. 2020); see also Ann E. Marimow, *Court Upholds North Carolina's Voter Identification Law*, WASH. POST (Dec. 2, 2020, 4:45 PM), https://www.washingtonpost.com/local/legal-issues/north-carolina-voter-id-law-upheld/2020/12/02/98046de0-34c6-11eb-8d38-6aea1adb3839_story.html.

⁴⁵² See *Holmes*, 840 S.E.2d at 266–67 (affirming superior court order enjoining implementation of voter I.D. requirement).

⁴⁵³ *Holmes v. Moore*, 18 CVS 15292, Final Judgment and Order (Sept. 17, 2021), ¶ 206, <https://www.nccourts.gov/assets/inline-files/2021-09-17-Holmes-v-Moore-Final-Judgment-18-CVS-15292.pdf>; see also Will Doran, *NC's Voter ID Law is Racially Discriminatory and Unconstitutional, State Court Rules*, THE NEWS & OBSERVER (Sept. 20, 2021), <https://www.newsobserver.com/news/politics-government/article254318478.html>.

⁴⁵⁴ See Denise Lieberman, *North Carolina Moves Legislation to Make Voting by Mail Harder*, BRENNAN CTR. FOR JUST. (June 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/north-carolina-moves-legislation-make-voting-mail-harder>; see also Anjali Patel, *NC*

difficult to vote by mail, a method heavily utilized by Black North Carolinians and younger voters in the 2020 election.⁴⁵⁵

The political power of North Carolina's Black voters (in Wilmington and elsewhere) is also diluted by gerrymandering, on both the state and federal level. "North Carolina is one of the most extremely gerrymandered states in the nation," and, as a result, it "has been home to a decade's worth of redistricting litigation."⁴⁵⁶ Since 2010—four years after the Commission issued its Report regarding 1898—that redistricting has sharply leaned in favor of Republicans, who are predominantly White.⁴⁵⁷ The state has a history of using this power to dilute the impact of Black votes in the Cape Fear region, beginning in 1870, when Conservatives redrew county boundaries to form Pender County, splitting it off from the rest of New Hanover.⁴⁵⁸

Gerrymandering distinctly impacts political representation in North Carolina today. In the 2016 Congressional election, Republican candidates won ten of North Carolina's thirteen House seats (77%) even though they

Democrats, Republicans Seek to Change Voting Rules in Opposing Pieces of Legislation, ABC13 NEWS (Mar. 31, 2021), <https://wlos.com/news/local/nc-democrats-republicans-seek-to-change-voting-rules-in-opposing-pieces-of-legislation> (discussing how Western Carolina political scientist Prof. Chris Cooper believes that this legislation was proposed "in reaction to the 2020 presidential election.").

⁴⁵⁵ See Lieberman, *supra* note 454 (noting that this "voter suppression bill would likely prevent thousands of mail ballots from being counted, disproportionately affecting people of color and young people"); see also Yanqi Xu, *N.C. Senate Democrats, Civil Right Advocates Worry Bills Claiming to Expand Voting Rights Do the Exact Opposite*, NC POL'Y WATCH: THE PROGRESSIVE PULSE (June 10, 2021), <http://pulse.ncpolicywatch.org/2021/06/10/n-c-senate-democrats-civil-right-advocates-worry-bills-claiming-to-expand-voting-rights-do-the-exact-opposite/#sthash.wPEtyvcg.5W2i8xSR.dpbs> (discussing potential impact of Senate Bills 326, 724, and 725).

⁴⁵⁶ *North Carolina*, PRINCETON GERRYMANDERING PROJECT, <https://gerrymander.princeton.edu/reforms/NC> (last visited Aug. 20, 2021); see, e.g., *Covington v. North Carolina*, 316 F.R.D. 117, 176 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017) (finding twenty-eight districts to be racially gerrymandered); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding that North Carolina's 2011 Congressional Redistricting Plan violated the Equal Protection Clause).

⁴⁵⁷ See *North Carolina*, *supra* note 456. The Princeton Gerrymandering Project "does nonpartisan analysis to understand and eliminate partisan gerrymandering at a state-by-state level," using "mathematical tests that rigorously diagnose unequal opportunity and unfair outcomes in district maps." *About*, PRINCETON GERRYMANDERING PROJECT, <https://gerrymander.451.edu/about> (last visited Aug. 20, 2021).

⁴⁵⁸ UMFLEET, *supra* note 15, at 13–14; see also Zucchini, *supra* note 31, at 333 (noting that, in the 1890's, "Wilmington's white leaders herded blacks into black majority wards to dilute their voting power.").

won only 53% of the statewide vote.⁴⁵⁹ In 2018, Republicans won nine of twelve House seats (75%) despite receiving about half the total votes.⁴⁶⁰ Recent data shows New Hanover County's population (where Wilmington is located) is about 13.5% Black and 80% White, with political party registration almost evenly spread among Democrats (30%), Republicans (31%), and Unaffiliated voters (38%).⁴⁶¹ However, as of 2021, political representation in New Hanover County was overwhelmingly Republican and 100% White.⁴⁶²

The Commission's hope that the federal government would further protect Black voting rights in the communities impacted by the anti-democratic Coup of 1898 has not been realized. Instead, federal oversight of state election law in North Carolina has retreated, enabling the state to restrict access to the ballot box and to dilute the impact of Black votes in Wilmington and throughout the state.

4. Educating the Children of North Carolina and the World Regarding 1898

The Commission's Report also focuses on education, specifically, educating the world about the events of 1898 in Wilmington and teaching

⁴⁵⁹ *Rucho v. Common Cause*, 139 S. Ct. 2484, 2510 (2019) (Kagan, J., dissenting); *see also Common Cause v. Lewis*, COMMON CAUSE N.C. (Dec. 17, 2019), <https://www.commoncause.org/north-carolina/resource/common-cause-v-lewis/> (noting that "[i]n the 2012, 2014, and 2016 elections, Republicans won veto-proof super-majorities in both chambers of the General Assembly despite winning only narrow majorities of the overall statewide vote.").

⁴⁶⁰ *Rucho*, 139 S. Ct. at 2510 (Kagan, J., dissenting). The election for North Carolina's 13th House seat was tainted by fraud and required a new election. *Id.*

⁴⁶¹ *See QuickFacts: New Hanover County, North Carolina*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/newhanovercountynorthcarolina/PST045219> (analyzing racial composition based on population estimates as of July 1, 2019); Rebecca Tibbett, *Who Are North Carolina's 7 Million Registered Voters?*, CAROLINA DEMOGRAPHY (Aug. 13, 2020), <https://www.ncdemography.org/2020/08/13/who-are-north-carolinas-7-million-registered-voters/> (examining county-by-county political party affiliation as of July 25, 2020).

⁴⁶² Both of New Hanover County's state senators are Republicans. Two of New Hanover County's representatives in the North Carolina State House are Republicans; the third is a Democrat. *See New Hanover County Representation: 2021-2022*, N.C. GEN. ASSEMBLY, <https://ncleg.gov/Members/CountyRepresentation/New%20Hanover> (last visited Aug. 10, 2021). New Hanover County is part of North Carolina's seventh congressional district, which is represented by a Republican. *See Biography*, U.S. CONGRESSMAN DAVID ROUZER: REPRESENTING THE 7TH DISTRICT N.C., <https://rouzer.house.gov/> (last visited Aug. 10, 2021).

the children of North Carolina how the triumph of White supremacy in 1898 has impacted the trajectory of the state's history and that of the nation.⁴⁶³ One tool for doing so was the Report itself. The Commission recommended that the North Carolina Office of Archives and History maintain and distribute the Report, which it has done.⁴⁶⁴ The Report has further been published in an annotated, condensed version as *A Day of Blood: The 1898 Wilmington Race Riot*, a book that is available on Amazon.com and through other booksellers.⁴⁶⁵

The Report also calls upon newspapers to “acknowledge the role of media in the events of 1898 and work with the North Carolina Black press association to prepare a summary of the Commission report for distribution statewide.”⁴⁶⁶ The Raleigh News and Observer and the Charlotte Observer have acknowledged their respective roles in fomenting the massacre in 1898 and apologized for doing so.⁴⁶⁷ The newspaper most directly responsible for spreading the propaganda that enabled the coup—Josephus Daniels’ Raleigh News and Observer—accepted the Report’s recommendation and commissioned a detailed report, *The Ghosts of 1898: Wilmington’s Race Riot and the Rise of White Supremacy*, which it published and widely distributed throughout the state in 2006.⁴⁶⁸ To date, however, neither the Raleigh News and Observer nor any other North Carolina newspaper has commissioned a study of the impact of 1898 and the Jim Crow era on the state’s Black press, as the Report also recommended.⁴⁶⁹ North Carolina’s newspapers also have not followed the Report’s recommendation to repair the damage they caused in 1898 by endowing scholarships at the state’s public universities.⁴⁷⁰

The Commission also envisioned another educational tool: a documentary regarding the Wilmington Massacre and Coup of 1898, which it urged the government to fund.⁴⁷¹ A documentary regarding 1898

⁴⁶³ See *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁶⁴ *Id.*

⁴⁶⁵ See UMFLEET, *supra* note 15.

⁴⁶⁶ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁶⁷ See Mark I. Pinsky, *Maligned in Black and White: Southern Newspapers Played a Major Role in Racial Violence. Do They Owe Their Communities an Apology?*, POYNTER: CRAIG NEWMARK CTR. FOR ETHICS & LEADERSHIP POYNTER INST. (June 1, 2021), <https://www.poynter.org/maligned-in-Black-white/>.

⁴⁶⁸ See Tyson, *supra* note 45.

⁴⁶⁹ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

was produced in 2015, *Wilmington on Fire*.⁴⁷² *Wilmington on Fire* has won multiple awards and, at present, is widely available via Amazon Prime Video and Vimeo.⁴⁷³ However, the film was privately funded and might never have been completed but for an unexpected donation from retired professional basketball player David West.⁴⁷⁴ A sequel, *Wilmington on Fire Part II: The Legacy of White Supremacy*, is in production with a projected release date of November 2021.⁴⁷⁵ This project is primarily being privately funded by Seed & Spark, a crowdfunding site.⁴⁷⁶

One of the most important recommendations in the Report regarding education focuses on the state's public-school curriculum. The Report calls upon the North Carolina Department of Public Instruction to "[i]ncorporate the 1898 events into Department of Public Instruction curriculum learning expectations" and to develop materials and provide workshops for teachers, so they can effectively provide instruction regarding this critical event in North Carolina and U.S. history.⁴⁷⁷ As noted previously, for decades public school instruction characterized the events of 1898 as a "race riot" instigated by Black residents of Wilmington, the result of which was the welcome restoration of order by a benevolent White regime.⁴⁷⁸ The Commission recognized that repairing the damage done by the White supremacist coup in Wilmington would require a deliberate effort to undo decades of teaching White supremacist propaganda as fact.

⁴⁷² WILMINGTON ON FIRE (Blackhouse Publishing 2015) (directed and produced by Christopher Everett); see *About*, WILMINGTON ON FIRE, <http://wilmingtononfire.com/about> (last visited Aug. 30, 2021).

⁴⁷³ Jon Evans, *Chris Everett: Filmmaker Working on the Follow Up to His Award-Winning 'Wilmington on Fire' Documentary ("1 on 1 with Jon Evans" Podcast)*, WECT NEWS 6 (Dec. 11, 2020, 5:30 AM), <https://www.wect.com/2020/12/11/chris-everett-filmmaker-working-follow-up-his-award-winning-wilmington-fire-documentary-with-jon-evans-podcast/> (noting that *Wilmington on Fire* won awards for Best Documentary at the 2015 Cocalorus Film Festival, FilmSPARK, and North Carolina Black Film Festivals).

⁴⁷⁴ *Id.*

⁴⁷⁵ *See id.*

⁴⁷⁶ *See id.*

⁴⁷⁷ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁷⁸ *See* Tyson *supra* note 45, at 16; *see also* Hunter Ingram, *Is the Wilmington 1898 Coup Getting Lost in the Classroom?*, STARNEWS ONLINE (Aug. 19, 2020, 11:33 AM), <https://www.starnewsonline.com/story/news/education/2020/08/19/is-wilmington-1898-coup-getting-lost-in-classroom/113350746/> (noting that "historians, community members and descendants of the victims have fought for years to get [1898] into the local school curriculum—after a long, deliberate absence from classrooms").

However, even today, North Carolina's standard curricula for public school students gives little guidance regarding the teaching of 1898. Under the 2010 version of the standards, 1898 appeared only in the eighth-grade social studies curriculum, in a manner vaguely worded and stripped of context. The standards stated that students should "[u]nderstand the ways in which conflict, compromise and negotiation have shaped North Carolina and the United States," with one "clarifying objective" being the ability to summarize how "leadership and citizen actions," such as the "Wilmington Race Riots, 1898," had influenced the outcome of "key conflicts" in North Carolina and the rest of the United States.⁴⁷⁹ After much debate, the 2020 revised standards for eighth grade social studies now include an objective to "explain how slavery, segregation, voter suppression, reconcentration, and other discriminatory practices have been used to suppress and exploit certain groups within North Carolina and the nation over time," but without a specific reference to 1898.⁴⁸⁰ The 2020 standards for high school American history were similarly edited to become more accurate and inclusive.⁴⁸¹ However, they do not require teachers to cover the events of 1898.⁴⁸² Even in the New Hanover County School District, the topic of Wilmington in 1898 "is a strongly encouraged lesson but not currently required" under the American History curriculum map.⁴⁸³

The state also has not embraced the Commission's challenge to "develop appropriate grade-level curriculum materials" to teach children about 1898, or to "provide teacher workshops for effectively integrating the materials into instruction."⁴⁸⁴ To date, "hurdles like funding, time,

⁴⁷⁹ NORTH CAROLINA STATE BOARD OF EDUCATION, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA ESSENTIAL STANDARDS FOR EIGHTH GRADE SOCIAL STUDIES 2–3 (2010) (standard 8.H.2.2).

⁴⁸⁰ NORTH CAROLINA STATE BOARD OF EDUCATION, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA STANDARDS FOR GRADE 8 (SOCIAL STUDIES) 4–5 (2021) (standard 8.H.1.3); see also T. Keung Hui, 'Inclusive' or 'Divisive'? NC's Proposed Social Studies Standards Spur New Debate, NEWS & OBSERVER (Jan. 7, 2021, 10:23 AM), <https://www.newsobserver.com/news/local/education/article248311795.html>.

⁴⁸¹ See NORTH CAROLINA STATE BOARD OF EDUCATION, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA STANDARDS FOR AMERICAN HISTORY (2021); see also Ingram, *supra* note 478.

⁴⁸² See NORTH CAROLINA STATE BOARD OF EDUCATION, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA STANDARDS FOR AMERICAN HISTORY (2021) (noting the required objectives for Social Studies teachers in North Carolina).

⁴⁸³ See Ingram, *supra* note 478.

⁴⁸⁴ *Recommendations*, in WILMINGTON REPORT, *supra* note 46. In September 2021, the University of North Carolina at Chapel Hill offered a virtual workshop for educators to discuss

resources and no consistent directive on how to teach [the Wilmington Massacre of 1898] continue to pose persistent challenges” for teachers.⁴⁸⁵ Whether and to what extent a child encounters this material in the classroom currently depends on “their teacher, school, and academic opportunities,” which vary widely.⁴⁸⁶ Many educators worry that 1898 will receive even less attention in the future in North Carolina public schools, due to the Department of Public Instruction’s decision in 2019 to eliminate one semester of American history and replace it with a course entitled “personal finance literacy and economics.”⁴⁸⁷

As noted above, North Carolina has made a limited amount of progress in terms of ensuring that public school children are taught accurate historical lessons about slavery and racial oppression in the state.⁴⁸⁸ Although the Wilmington Massacre and Coup of 1898 is not a required piece of that curriculum, the revised general standards (which, for the first time, use the words “slavery, segregation, and voter suppression”) will be difficult to meet without including it.⁴⁸⁹ However, even this limited amount of progress is currently under assault, as critics at both the local and state level erroneously charge that these standards require the teaching of “Critical Race Theory” in schools, which they want to ban.⁴⁹⁰ The North

strategies for teaching children about the events of 1898 in Wilmington, and “for teaching ‘hard history’ in general.” Carolina Public Humanities, *Wilmington 1898: The Hidden History of An American Coup D’état* (Sept. 9, 2021), <https://humanities.unc.edu/wilmington-1898-the-hidden-history-of-an-american-coup-detat/>. This workshop was funded by the Braitmayer Foundation, a non-profit family foundation that provides grants to support “innovative practices in K-12 education throughout the United States.” *Id.*; see Braitmayer Foundation, <https://www.braitmayerfoundation.org/guidelines/>.

⁴⁸⁵ Ingram, *supra* note 478 (noting that “most educators who dedicate time to 1898 freely admit it is hard to teach.”).

⁴⁸⁶ *Id.*

⁴⁸⁷ Ingram, *supra* note 478; see also T.Keung Hui, *NC Social Studies Classes Are About to Change. And Some Teachers Aren’t Happy About It.*, NEWS & OBSERVER (Jan. 17, 2020, 3:11 PM), <https://www.newsobserver.com/news/local/education/article238863838.html>.

⁴⁸⁸ See *supra* notes 480–81 and accompanying text.

⁴⁸⁹ NORTH CAROLINA STATE BOARD OF EDUCATION, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA STANDARDS FOR GRADE 8 (Social Studies) 4–5 (2021) (standard 8.H.1.3).

⁴⁹⁰ See T. Keung Hui, *Will NC Schools Banning Critical Race Theory Lead to ‘Witch Hunts’ of Teachers?*, NEWS & OBSERVER (July 18, 2021, 6:04 PM), <https://www.newsobserver.com/news/local/education/article252828083.html>; Sydney Hoover, *New Hanover Parents Push Back Against Schools’ New Equity Initiatives*, STARNEWS ONLINE (May 12, 2021, 6:30 AM), <https://www.starnewsonline.com/story/news/2021/05/12/new-hanover-parents-call-new-equity-training-marxist-indoctrination/4961388001/>. Several other states, including Florida and Oklahoma, are experiencing similar waves of backlash, threatening

Carolina legislature passed such a bill, entitled Ensuring Dignity & Nondiscrimination/Schools, on a party-line vote (with all Republicans in favor and all Democrats opposed), but it was vetoed by Governor Roy Cooper.⁴⁹¹ A recent meeting of the New Hanover County Board of Education had to be cut short, as unruly parents, in part protesting the teaching of “critical race theory,” turned the meeting into a “free-for-all.”⁴⁹² Teaching children the truth about “slavery, segregation, and voter suppression” in their state and their country is absolutely critical to understanding that history and moving forward.

5. Improving Access to Education in the New Hanover County School District

The Commission also recommended that state and local governments improve education in Wilmington by increasing “support for tutoring and mentoring programs in New Hanover County, targeting at-risk youth.”⁴⁹³ One non-profit organization that embraces this mission is Communities in Schools – Cape Fear (“CISCF”), founded in 2005, just before the issuance of the Commission’s Report.⁴⁹⁴ CISCF sponsors an after-school center located in downtown Wilmington, the Wilmington Youth Center for Inspiration, Recreation and Education (“WIRE”), where “at-risk students and their families” can receive “free, positive, daily programming” in a safe environment, including “targeted tutoring . . . designed to improve

educational progress. See Jeffery S. Solocheck, *Florida Bans Use of Critical Race Theory, ‘1619 Project’ in Teaching History*, MIAMI HERALD (June 10, 2021, 1:12 PM), <https://www.miamiherald.com/news/local/education/article252022148.html>; Adrian Florido, *Teachers Say Laws Banning Critical Race Theory Are Putting a Chill on Their Lessons*, NPR (May 28, 2021, 9:04 AM), <https://www.npr.org/2021/05/28/1000537206/teachers-laws-banning-critical-race-theory-are-leading-to-self-censorship>.

⁴⁹¹ Ensuring Dignity & Nondiscrimination in Schools, H.B. 324, 2021 N.C. Sess. Laws., <https://www.ncleg.gov/BillLookUp/2021/H324>; Dawn Baumgartner Vaughn, *NC Gov. Cooper vetoes anti-Critical Race Theory bill he calls ‘conspiracy-laden politics,’* CHARLOTTE OBSERVER (Sept. 10, 2021), <https://www.charlotteobserver.com/news/politics-government/article253948433.html>.

⁴⁹² Sydney Hoover, *‘Stop this Malarkey’: Audience Outrage Prompts New Hanover School Board to End Meeting*, STARNEWS ONLINE (July 13, 2021, 9:40 AM), <https://www.starnewsonline.com/story/news/2021/07/13/new-hanover-school-board-abruptly-ends-meeting-audience-outrage-critical-race-theory-crt/7959947002/>.

⁴⁹³ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁴⁹⁴ See *Communities in Schools of Cape Fear*, CAUSE IQ, <https://www.causeiq.com/organizations/communities-in-schools-of-cape-fear,203385755/> (last updated June 2020).

each student's math and literacy skills."⁴⁹⁵ CISCf also provides Student Support Specialists to at-risk students in various schools throughout New Hanover and Pender Counties.⁴⁹⁶ In the summer of 2021, CISCf sponsored a Freedom School in New Hanover County, "[r]ooted in the Mississippi Freedom Summer project of 1964" providing a "summer literacy and cultural enrichment program" for children.⁴⁹⁷ Roughly half of CISCf's approximately \$1.7 million annual budget derives from government grants; the rest comes from fundraising and private donations.⁴⁹⁸

CISCf has diligently worked to address the needs of poor children living in Wilmington, who are predominantly Black, since its founding in 2005. However, its impact as a nonprofit has been constrained by larger trends in public education in New Hanover County, which have undermined rather than advanced educational opportunity for these children. For decades, education for the Black children of Wilmington has cycled between progress and regression, as strides forward have been met with reactionary push-back. By 1868, six schools had been established in Wilmington for the children of freed slaves, producing graduates who served as leaders throughout the city and the state.⁴⁹⁹ After 1898, New Hanover County substantially cut funding for Black schools, and Black literacy rates declined.⁵⁰⁰

Despite persistent unequal funding, Wilmington's segregated public schools—especially Williston High School, the only secondary school for Black students from 1923 to 1968 in New Hanover County—were a source of pride in the community.⁵⁰¹ When New Hanover County schools were forced to integrate in 1968 (fourteen years after *Brown v. Board of*

⁴⁹⁵ *Programs*, CMTYS. IN SCHS. CAPE FEAR, <https://www.ciscapefear.org/programs/> (last visited Aug. 20, 2021).

⁴⁹⁶ *Id.* Student support specialists link students with resources, including "mental health counseling, tutoring, attendance monitoring, mentoring, and afterschool programs." *Id.*

⁴⁹⁷ *2021 CIS Freedom School!*, CMTYS. IN SCHS. CAPE FEAR, <https://www.ciscapefear.org/orangestreet/> (last visited Aug. 10, 2021).

⁴⁹⁸ *Communities in Schools of Cape Fear*, *supra* note 497.

⁴⁹⁹ *See* UMFLEET, *supra* note 15, at 19.

⁵⁰⁰ *See* UMFLEET, *supra* note 15, at 155.

⁵⁰¹ *Museum to Honor the History and Legacy of Williston School*, CAPE FEAR MUSEUM (June 22, 2018, 10:52 AM), <https://www.capefearmuseum.com/museum-to-honor-the-history-and-legacy-of-williston-school/>; *Williston High School*, AFR. AM. HERITAGE FOUND. OF WILMINGTON, http://www.aahfwilmington.org/aahmw_virtualexhibits_placemaking_1williston.html (last visited Aug. 10, 2021).

*Education*⁵⁰²), the school board closed Williston rather than assign White and Black students to attend the storied high school.⁵⁰³ Instead, Black students and teachers from Williston were sent to formerly all-White New Hanover and Hoggard high schools, causing racial tensions to erupt, ultimately culminating in the case of the Wilmington Ten.⁵⁰⁴ Despite this violent beginning, after decades of work and a second federal lawsuit,⁵⁰⁵ New Hanover County successfully integrated its schools, achieving broad levels of diversity by the 1990's.

However, beginning in 2006 (the same year the 1898 Commission issued its Report) and continuing in 2008 and 2010, the New Hanover County School Board “erased years of work to integrate schools” by shifting to a “neighborhood schools” model of student distribution.⁵⁰⁶ As a result, decades of “[h]yper-segregation already present in housing patterns, brought on by mid-century redlining and discrimination” have translated to equally hyper-segregated public schools.⁵⁰⁷ These residential segregation patterns, which are now mirrored in the public schools, ultimately trace their roots to 1898 and its progeny, Jim Crow.

The implementation of a “neighborhood schools” plan in New Hanover County began in dramatic fashion. In 2006, after months of debate and public comment on two different redistricting maps, the school

⁵⁰² 347 U.S. 483 (1954). A federal lawsuit filed by civil rights activist Dr. Hubert A. Eaton in 1964, on behalf of his daughter Carolyn, led to the integration of New Hanover County Schools. See Ben Steelman, *Who is Hubert A. Eaton?*, MYREPORTER.COM (Apr. 3, 2009), <http://www.myreporter.com/2009/04/hubert-a-eaton/>.

⁵⁰³ *Williston High School*, *supra* note 501; see Cammie Belamy, *Alumni reflect on 50 years since High School closed*, STARNEWS ONLINE, <https://www.starnewsonline.com/news/20180702/alumni-reflect-on-50-years-since-williston-high-closed> (last updated July 2, 2018, 4:16 PM).

⁵⁰⁴ See Belamy, *supra* note 503; see also *supra* notes 235–38 and accompanying text.

⁵⁰⁵ See *infra* note 596.

⁵⁰⁶ Alexandria Sand Williams, *Deep Dive: A Decade Ago, Some Predicted ‘Neighborhood Schools’ Would Leave Black Children Behind. It Did.*, PORT CITY DAILY (Nov. 15, 2020), <https://portcitydaily.com/localnews/2020/11/15/deep-dive-a-decade-ago-it-was-predicted-neighborhood-schools-would-leave-Black-children-forgotten-now-that-they-have-can-the-county-turn-back/>; see also UNC CTR. FOR CIV. RTS., THE INCLUSION PROJECT, NEW HANOVER COUNTY, N.C.: AN IN-DEPTH ANALYSIS OF THE LEGACY OF SEGREGATED COMMUNITIES 1, <http://www.uncinclusionproject.org/documents/newhanoverreportfinal.pdf> (noting that the school board’s decision to move to a neighborhood school’s model “signaled an end to the district’s effort to maintain racial and socio-economic diversity in its schools in the face of significant residential segregation”) [hereinafter *Legacy of Segregated Communities*].

⁵⁰⁷ Williams, *supra* note 506; see also *Legacy of Segregated Communities*, *supra* note 506, at 3.

board voted to approve a third map without public comment or real opportunity for debate, in a move described as a “slap in the face to the Black community.”⁵⁰⁸ The third redistricting map significantly reduced the number of White students assigned to attend schools located in high-poverty, majority Black areas in Wilmington.⁵⁰⁹ These schools were “almost cynically” designated “magnet schools,” under the notion that White parents in other parts of the county would volunteer to send their children to these schools.⁵¹⁰ They did not.⁵¹¹ The redistricting process continued in 2010 when, despite opposition from three school board members, the school board again implemented a plan that “concentrated the most disadvantaged students in a few schools.”⁵¹²

By the 2015-2016 school year, New Hanover County’s four magnet schools had become “racially isolated, high poverty schools” that were under-enrolled.⁵¹³ Gregory Elementary (now known as the International School at Gregory) (“Gregory”) provides the starkest example of the impact of school redistricting in New Hanover County. Gregory is located at 1106 Ann Street in Wilmington, about five blocks from the site where Alexander Manly’s Daily Record printing office was burned and destroyed on November 10, 1898.⁵¹⁴ Part of the existing school was built in 1931 as Williston Industrial High School, a beacon of pride and excellence in the Black community.⁵¹⁵ Gregory first became a magnet school in 1993.⁵¹⁶ By the 2005-2006 school year, Gregory was fully integrated, with a population of 570 almost evenly divided between White

⁵⁰⁸ See Cheryl Welch, *New School Plan Met with Dismay*, STARNEWS ONLINE, <https://www.starnewsonline.com/news/20060621/new-school-plan-met-with-dismay> (last updated June 21, 2006, 11:20 AM) (quoting Rev. Hudson Barksdale, pastor of Gregory Congregational United Church of Christ).

⁵⁰⁹ Under the school redistricting plan adopted in 2006, Freeman and Snipes, the two elementary schools with the highest Black population, “were drained of 565 students and turned into magnet schools.” *Id.*

⁵¹⁰ Williams, *supra* note 506.

⁵¹¹ In 2016, Snipes Elementary received nine applications for its magnet program; only four families applied to attend the magnet school at Freeman Elementary. *Id.*

⁵¹² *Id.*

⁵¹³ *Legacy of Segregated Communities*, *supra* note 506, at 3. In 2019, 98% of students attending Freeman Elementary were eligible for free or reduced-price meals. Williams, *supra* note 506.

⁵¹⁴ See UMFLEET, *supra* note 15, at 156.

⁵¹⁵ *About Us, History of Gregory School*, INT’L SCH. AT GREGORY, <https://gregory.nhcs.net/about-us> (last visited Aug. 10, 2021). Williston High School moved to a new site in 1954, which now houses Williston Middle School. *Id.*

⁵¹⁶ *Id.*

(48.6%) and Black (48%) students.⁵¹⁷ Ten years later, Gregory's enrollment had dropped to 387 students: 5.4% White, 5.2% Latino, and 86% Black.⁵¹⁸ Student achievement at all of New Hanover County's magnet schools, including Gregory, has fallen precipitously since these schools have become increasingly segregated.⁵¹⁹

In 2020, the New Hanover County Community Relations Advisory ("CRA") Committee began pressing the Wilmington City Council and the New Hanover School Board "to reintegrate schools."⁵²⁰ However, the redistricting proposal implemented for the 2020-2021 academic year "does not improve diversity at most of the schools" in New Hanover County.⁵²¹ The redistricting committee claimed that the plan improves "diversity at a handful of schools where the opportunity exists to do so," but could not effect significant change without "deviating too far away from other criteria," presumably students' geographic proximity to schools.⁵²² Rebecca Trammel, speaking on behalf of a group opposed to the redistricting plan, observed, "Once again, Black children in this town are an afterthought."⁵²³

B. Proposals for Moving Forward

The process of bringing restorative justice to Wilmington has begun, but it is by no means complete. The progress that has been made has mostly been achieved through privately funded, localized efforts.⁵²⁴ The

⁵¹⁷ *Legacy of Segregated Communities*, *supra* note 506, at 3.

⁵¹⁸ *Id.*

⁵¹⁹ Gregory's End-of-Grade (EOG) exam pass rate dropped from almost 80% in the 2005/2006 school year, to around 40% in 2015/2016. *Id.* at 4. Wilmington's three other magnet schools—Freeman, Snipes, and D.C. Virgo—also showed sharp declines in EOG proficiency over the same ten-year period. *Id.*

⁵²⁰ Williams, *supra* note 506. The CRA Committee, or C-RAC, was formed in 2016 by the City of Wilmington and New Hanover County "to address community issues involving prejudice or discrimination." *Community Relations Advisory Committee*, NEW HANOVER CNTY., <https://www.nhcgov.com/community-relations/> (last visited Aug. 10, 2021).

⁵²¹ *Redistricting Study*, NEW HANOVER CNTY. SCHS. 11 (Nov. 19, 2019), https://croppermap.com/nhcs/documents/NHCSMeeting5November19PowerPoint_191105v2.pdf; *see also* Williams, *supra* note 506.

⁵²² *Redistricting Study*, *supra* note 521, at 11; *see also* Williams, *supra* note 506.

⁵²³ Matt Bennett, *New Hanover School Board Passes Redistricting Maps for 2020-21*, WWAY 3 (Dec. 3, 2019, 8:18 PM), <https://www.wwaytv3.com/2019/12/03/new-hanover-school-board-passes-redistricting-maps-for-2020-21/>.

⁵²⁴ *See supra* Section III.A. In addition to the organizations and individuals previously mentioned, the Restorative Justice Collaborative at UNC Wilmington has also been instrumental

governments that either orchestrated or enabled the systematic wrongs that occurred in 1898 have, to date, done relatively little to repair them. In many key areas, such as voting rights and education, the state has backslid in the years since the 1898 Commission issued its Report, undermining rather than advancing efforts to restore the community that was scarred in 1898.⁵²⁵ Therefore, much work needs to be done in Wilmington and throughout the State of North Carolina. The following section sets forth proposals to continue this endeavor. In doing so, we lean heavily on the work that has already been done by the Wilmington Race Riot Commission and the people of Wilmington, who are in the best position to judge their own needs and to fashion their own reparations.⁵²⁶

1. Compensating the Victims of 1898

One of the Commission's key recommendations, under the heading of Empowerment, was to provide direct compensation to the descendants of the victims of 1898, via an endowment funded by the government and administered by the Wilmington Restructuring and Development Authority.⁵²⁷ Just as in Tulsa, however, to date no money has been paid to any of these people, or any effort made to do so on the part of the state or local government. The payment of monetary reparation cannot, by itself, mend the wounds inflicted over a hundred years ago, but it is a critical and necessary step. As Darity and Mullen have explained, “[f]or both symbolic and substantive reasons, an effective program of restitution must include direct payments to eligible recipients.”⁵²⁸

As discussed above, the payment of direct reparations to descendants of victims of a state-supported pogrom is not without precedent, as illustrated by the example set in Rosewood, Florida.⁵²⁹ Larry Reni

in bringing restorative justice practices to the City of Wilmington, including those designed to address “generational traumas of racial injustices.” See UNC Wilmington, *Restorative Justice Collaborative at UNCW*, <https://uncw.edu/engagement/rjc/>.

⁵²⁵ See *supra* Section III.A.

⁵²⁶ See Renee Warden, *Where Is the Empathy? Understanding Offenders' Experience of Empathy and Its Impact on Restorative Justice*, 87 UMKC L. REV. 953, 955 (2019) (noting that restorative justice “emphasizes the victims’ needs, empowers victims to decide what reparation the offender should provide, and often measures program success by the benefit to victims.”).

⁵²⁷ *Recommendations*, in WILMINGTON REPORT, *supra* note 46.

⁵²⁸ DARITY & MULLEN, *supra* note 243, at 265 (emphasis in original); see also Brooks, *Postconflict Justice*, *supra* note 331, at 276–77 (noting that reparations make apologies believable and “solidify the rhetoric of remorse.”).

⁵²⁹ See *supra* notes 353–363 and accompanying text.

Thomas, a local activist and historian, has pressed for reparations as the founder of ICROW, Inc. (International Organization for Compensation and Reparations for the Victims of the Wilmington Massacre of 1898).⁵³⁰ The North Carolina chapter of Coming to the Table, a group dedicated to restorative justice and the goal of Taking America Beyond the Legacy of Enslavement (“T.A.B.L.E.”),⁵³¹ has presented a petition to the New Hanover County Commissioners and the Wilmington City Council seeking the establishment of a board to oversee the payment of reparations to “victims of racial terrorism, systematic racial exclusions, and continuing racial segregation in New Hanover County.”⁵³² These local government entities have, to date, taken no action in response to the petition.

Some descendants of the victims of 1898 are currently known. Members of the local chapter of the Equal Justice Initiative have conducted genealogy research to identify individuals who were murdered during the Wilmington Massacre and their descendants; to date, they have located living relatives of two individuals known to have been killed in 1898, Joshua Halsey and Daniel Wright.⁵³³ Some descendants of the survivors of 1898, such as Cynthia Brown and Dr. Geoff Ward, are well-known activists who are fighting to bring restorative justice to Wilmington and other places impacted by racial violence.⁵³⁴ The documentary

⁵³⁰ See Larry Reni Thomas, *Endorse Compensation for 1898 Wilmington Massacre Victims*, CHANGE.ORG, <https://www.change.org/p/the-general-public-endorse-compensation-for-1898-wilmington-massacre-victims> (last visited Aug. 10, 2021).

⁵³¹ COMING TO THE TABLE, <https://comingtothetable.org/> (last visited Aug. 10, 2021).

⁵³² Kimberly Cook, *Petition for Reparations for Historical Violence Against African American People in New Hanover County*, CHANGE.ORG, <https://www.change.org/p/new-hanover-county-commission-and-wilmington-city-council-reparations-for-historical-violence-against-african-american-people-in-new-hanover-county> (last visited Aug. 10, 2021); see *Reparations . . . The Time is Now!*, COMING TO TABLE REPARATIONS WORKING GRP. (Aug. 2019), <https://comingtothetable.org/wp-content/uploads/2019/07/CTTT-Reparations-Guide-August-2019.pdf> (advocating more broadly for reparative justice in the United States); see also Thomas, *supra* note 530 (seeking signatures on a similar petition).

⁵³³ See Interview with Jim Downey, EJI representative in Wilmington, N.C. (May 21, 2021); see also *New Effort Underway to Preserve Wilmington's History*, WECT NEWS 6 (Mar. 22, 2021, 6:00 PM), <https://www.wect.com/video/2021/03/22/new-effort-underway-preserve-wilmington-history/> (interviewing Nate Brown, the great-great grandson of Joshua Halsey).

⁵³⁴ See Sydney Trent, *A Black Voting Rights Activist Confronts the Ghosts of Racial Terror in North Carolina*, WASH. POST (Oct. 29, 2020, 7:00 AM), <https://www.washingtonpost.com/history/2020/10/29/wilmington-coup-massacre-election-trump/> (discussing activism of Cynthia Brown); Elizabeth Montgomery, *1898 Riot Survivor's Descendant Archives Racial Violence*, STAR NEWS ONLINE (Mar. 29, 2017, 12:33 PM),

Wilmington on Fire also features interviews with descendants of the victims of 1898, including Dr. Lewin Manly, the grandson of Alex Manly⁵³⁵; Inez Eason, the great-granddaughter of Isham Quick; and Faye Chaplin, the great-granddaughter of Thomas C. Miller.⁵³⁶ The descendants of Alex Manly—the man whose newspaper office, *The Daily Record*, was burned to the ground—have an especially clear claim to property that was destroyed as a result of the conspiracy to ethnically cleanse Wilmington, destroy the political power of Black men throughout the state of North Carolina, and install a White supremacist government. The families should be compensated.

The Report issued in 2006 proposed that federal, state, and local government pay for individual reparations, as well as broader community-wide initiatives, by funding an endowment that, to date, has never been established.⁵³⁷ Darity and Mullen have set forth more specific parameters for the administration of a reparations fund, but the fund they propose derives from the same concept: a government-funded endowment administered by a commission that would receive and adjudicate claims for individual and community reparations.⁵³⁸ All of the proposals set forth below that require monetary support should be paid for via the government-funded endowment administered by the Authority or a group similar to it.

<https://www.starnewsonline.com/news/20170329/1898-riot-survivors-descendant-archives-racial-violence> (discussing presentation made by Dr. Geoff Ward). Cynthia Brown's great-grandmother was a survivor of the 1898 Massacre, Athalia Howe Whitfield. See *America's Other Civil War: How White Nationalism Led to 'Civic Coups D'état,'* CBC RADIO, <https://www.cbc.ca/radio/ideas/america-s-other-civil-war-how-white-nationalism-led-to-civic-coups-d-%C3%A9tat-1.5151203> (last updated June 8, 2020). Professor Ward is the great-great grandson of John Thomas Howe, who was an educator, an agent for the *Daily Record*, and a representative in the North Carolina state legislature before the 1898 coup. See Montgomery, *supra* note 534; UMFLEET, *supra* note 15, at 180 (discussing Howe).

⁵³⁵ See Tyra M. Vaughn, *A Manly Returns*, STARNEWS ONLINE, <https://www.starnewsonline.com/article/NC/20070430/News/605104043/WM> (last updated Apr. 30, 2007, 6:16 AM) (discussing a speech by Manly, in Wilmington, in which he stated that time had not healed his "family's emotional scars" caused by the Coup of 1898, and his belief that "the state should replace what was stolen from his family.").

⁵³⁶ WILMINGTON ON FIRE, *supra* note 472. See also David Cecelski, *Their Eyes, Their Faces* (June 13, 2020), <https://davidcecelski.com/2020/06/13/their-eyes-their-faces/> (telling the story of Thomas McKeller, a Wilmington 1898 survivor who became a model for the artist John Singer Sargent).

⁵³⁷ See *supra* Section III.A.2.

⁵³⁸ DARITY & MULLEN, *supra* note 243, at 264–69. Darity & Mullen propose a 12-member commission elected by "all those with established eligibility for the reparation program." *Id.* at 267.

2. Restoring and Protecting the Voting Rights of the Black Community in Wilmington and throughout the State of North Carolina

Reaffirming and restoring the political rights of Black North Carolinians must also be a central piece of community restoration in Wilmington, as the White supremacists who attacked the city in 1898 sought to purge it, and ultimately the state, of all Black voters. They largely succeeded.⁵³⁹ To remedy the damage inflicted in 1898, which was only partially addressed by the federal Voting Rights Act of 1965,⁵⁴⁰ legislation is needed at the state and federal level to address (1) gerrymandering, and (2) continued attempts to suppress Black votes.

As discussed above, North Carolina is arguably the most gerrymandered state in the nation.⁵⁴¹ As a result, Black North Carolinians in Wilmington and throughout the state, most of whom tend to vote with the Democratic Party,⁵⁴² receive less representation in both the state and federal House of Representatives than do their fellow North Carolina citizens who are Republican and predominantly White.⁵⁴³ North Carolina allows partisan lawmakers in the General Assembly, who are currently majority Republican, to draw redistricting maps.⁵⁴⁴ Unlike most states, the governor, who is currently a Democrat, does not have the power to veto the maps drawn by the legislature.⁵⁴⁵ To end gerrymandering in North Carolina, which has drained political representation away from the same groups who were shut out of the political process after 1898, the process of drawing district maps for congressional seats must be changed.

According to a statewide poll, a majority of North Carolinians (even among Republicans) want to end gerrymandering in the state.⁵⁴⁶ House

⁵³⁹ See *supra* notes 186–87, and accompanying text.

⁵⁴⁰ Voting Rights Act of 1965, 52 U.S.C. § 10101.

⁵⁴¹ See *supra* note 456 and accompanying text; see also Bob Phillips, *It's Time to End Gerrymandering for Good in North Carolina*, COMMON CAUSE N.C. (Mar. 11, 2021), <https://www.commoncause.org/north-carolina/democracy-wire/its-time-to-end-gerrymandering-for-good-in-north-carolina/> (describing the state as “number one in gerrymandering.”).

⁵⁴² See *supra* note 444.

⁵⁴³ See *supra* notes 459–462 and accompanying text.

⁵⁴⁴ *North Carolina*, *supra* note 456.

⁵⁴⁵ *Id.*

⁵⁴⁶ *New Poll: Automatic Voter Registration Is a Hit*, CAROLINA FORWARD, <https://www.carolinaforward.org/blog/avr-poll> (last visited Aug. 2, 2021) (reporting that over 50% of Republicans stated that they either strongly agree (39%) or somewhat agree (20%) that

Bill 437, the Fair Maps Act, provides one path forward to achieve this end.⁵⁴⁷ The Fair Maps Act would amend the state constitution to establish an independent, 15-member Citizens Redistricting Commission, to remove partisanship from the process of drawing district maps for both the state and federal House of Representatives.⁵⁴⁸ If approved by the legislature, this proposed constitutional amendment would be presented to North Carolina voters in November 2022.⁵⁴⁹ Several other states rely upon a similar commission model to draw both state and federal congressional districts.⁵⁵⁰

To date, however, bills proposing redistricting reform in North Carolina have failed to secure strong bipartisan support, at least not enough to be enacted into law.⁵⁵¹ The political party in the legislative majority (currently the Republicans) tends to shun redistricting reform, because it equates the ability to draw legislative districts with the power to entrench itself via gerrymandering. As a result, North Carolina's redistricting maps have been tied up in the courts for at least a decade and are the subject of ongoing litigation.⁵⁵² The United States Supreme Court

“ending gerrymandering in North Carolina” is an important voting issue); *id.* (reporting that support for ending gerrymandering in the state was higher among Democrats (72% either strongly or somewhat agree) and Independents (63% either strongly or somewhat agree)); *see also Democrats Have Edge, Energy in North Carolina for 2018*, PUB. POL’Y POLLING (Jan. 23, 2018), https://www.publicpolicypolling.com/wp-content/uploads/2018/01/PPP_Release_NC_12318.pdf (presenting survey results showing 59% support for nonpartisan redistricting reform).

⁵⁴⁷ See Will Doran, *Should Voters Have a Say in Redistricting? N.C. Constitutional Amendment Proposal Says Yes*, NEWS & OBSERVER (Mar. 29, 2021, 2:46 PM), <https://www.newsobserver.com/news/politics-government/article250289150.html>; Bryan Warner, *Fair Maps Act Introduced in Legislature, Would End Gerrymandering in N.C. by Establishing Citizens Redistricting Commission*, COMMON CAUSE N.C. (Mar. 29, 2021, 12:26 PM), <https://www.commoncause.org/north-carolina/press-release/fair-maps-act-introduced-in-legislature-would-end-gerrymandering-in-nc-by-establishing-citizens-redistricting-commission/>; H.R. 69, 2019 Gen. Assemb., Reg. Sess. (N.C. 2019) (proposing to create a “Nonpartisan Redistricting Commission.”).

⁵⁴⁸ H.R. 437, 2021 Gen. Assemb., Reg. Sess., (N.C. 2021).

⁵⁴⁹ *Id.*

⁵⁵⁰ See *Number of States Using Redistricting Commissions Growing*, ASSOCIATED PRESS (Mar. 21, 2019), <https://apnews.com/article/4d2e2aea7e224549af61699e51c955dd> (explaining the redistricting process by state); *see also Redistricting Commissions*, BALLOTPEdia, https://ballotpedia.org/Redistricting_commissions (last visited Aug. 3, 2021) (explaining the redistricting process by state).

⁵⁵¹ See Doran, *supra* note 547.

⁵⁵² See Rusty Jacobs, *N.C.’s Long History of Litigation Over Redistricting: A Guide to Fair Maps or a Preview of Lawsuits to Come?*, WUNC 91.5 N.C. PUB. RADIO (July 14, 2021, 9:39

appeared to implant a further roadblock to redistricting reform in 2019 when it held, in *Rucho v. Common Cause*, that partisan gerrymandering presents a political question rather than a violation of the U.S. Constitution, and on that basis approved North Carolina's gerrymandered congressional districts.⁵⁵³ However, in the same year, *Common Cause v. Lewis* held that partisan gerrymandering violates the North Carolina constitution and rejected the state's 2017 redistricting maps on this basis.⁵⁵⁴ Hopefully, the *Lewis* decision will incentivize the state legislature to abandon its self-serving, ongoing efforts to deprive North Carolina voters—especially those who have been historically disenfranchised by the state—of their constitutional entitlement to “one person, one vote.”⁵⁵⁵

To repair the damage done in 1898, including the disenfranchisement of the Black community that it enabled, the State of North Carolina needs to enact legislation further protecting voting rights. Instead, as discussed above, it has done the opposite.⁵⁵⁶ North Carolina has joined the list of states that have embarked on a crusade often referred to as “Jim Crow 2.0,” pushing laws that restrict access to the ballot box, disproportionately impacting Black Americans in the name of combatting voter fraud.⁵⁵⁷ Although North Carolina lawmakers who are members of the Democratic party have proposed multiple bills that would simplify voter registration

AM), <https://www.wunc.org/politics/2021-07-14/ncs-long-history-of-litigation-over-redistricting-a-guide-to-fair-maps-or-a-preview-of-lawsuits-to-come>; see also *North Carolina*, *supra* note 456 (summarizing litigation re redistricting in North Carolina); *supra* note 456 and accompanying text.

⁵⁵³ 139 S. Ct. 2484, 2493–508 (2019).

⁵⁵⁴ No. 18 CVS 014001, 2019 WL 4569584, at *3, (N.C. Super. Ct. Sept. 3, 2019); see *Landmark Victory: Court Rules N.C. Partisan Gerrymandering is Unconstitutional, Orders New Legislative Maps Drawn for the 2020 Election*, COMMON CAUSE N.C. (Sept. 3, 2019, 4:35 PM), <https://www.commoncause.org/north-carolina/press-release/landmark-victory-court-rules-nc-partisan-gerrymandering-is-unconstitutional-orders-new-legislative-maps-drawn-for-the-2020-election/>.

⁵⁵⁵ See *Baker v. Carr*, 369 U.S. 186, 206–07 (1962).

⁵⁵⁶ See *supra* notes 443–55 and accompanying text.

⁵⁵⁷ See, e.g., Ari Berman, *Jim Crow Killed Voting Rights for Generations. Now the G.O.P. is Repeating History.*, MOTHER JONES (June 2, 2021), <https://www.motherjones.com/politics/2021/06/jim-crow-killed-voting-rights-for-generations-now-the-gop-is-repeating-history/>; Gillian Brockell, *Some Call Voting Restrictions Upheld by Supreme Court ‘Jim Crow 2.0.’ Here’s the Ugly History Behind that Phrase.*, WASH. POST (July 2, 2021, 7:00 AM), <https://www.washingtonpost.com/history/2021/07/02/jim-crow-voting-restrictions-supreme-court/>.

and voting itself, none of them have been enacted.⁵⁵⁸ Republican lawmakers have opposed all of these bills and instead continue to introduce legislation having the opposite effect.⁵⁵⁹ In part due to the gerrymandering that has given Republicans a substantial majority in the North Carolina state legislature, state legislation protecting and expanding voting rights has little chance at success, at least in this election cycle.

Once again, if the voting rights of Black Americans living in Wilmington and throughout the State of North Carolina (and the rest of the country) are to be protected, federal legislation will be required.⁵⁶⁰ In 2021 Republicans in the Senate filibustered the For the People Act, H.R. 1, a bill that mandates automatic and same-day voter registration and early voting in federal elections, among other reforms.⁵⁶¹ H.R. 1 also limits voter roll purging, which disproportionately impacts Black voters.⁵⁶² A second key piece of federal legislation, the John Lewis Voting Rights Advancement Act, H.R. 4, would repair the damage inflicted by *Shelby County v. Holder* by reinstating the preclearance requirement and otherwise strengthening the Voting Rights Act of 1965.⁵⁶³ This law has also been passed in the House of Representatives but is not likely to gain the approval of the Senate, where Democrats again do not have the votes

⁵⁵⁸ Safeguarding Voting Rights Act, H.R. 446, 2021 Gen. Assemb., Reg. Sess. (N.C. 2021) (proposing to implement a plethora of reforms, such as allowing people to register to vote when applying for a driver's license and simplifying absentee and electronic voting processes); *State Voting Bills Tracker 2021*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> (last updated May 28, 2021) (listing bills restricting voting access and expanding voting access, by state).

⁵⁵⁹ See Will Doran & Avi Bajpi, *Q&A: N.C. May Change Mail-In Voting, Voter Registration and More. What You Need to Know*, NEWS & OBSERVER (June 17, 2021, 9:47 AM), <https://www.newsobserver.com/news/politics-government/article252162713.html>.

⁵⁶⁰ Alabama Rep. Terri Sewell introduced the John Lewis Voting Rights Act in the House, stating, "Today, old battles have become new again as we face the most pernicious assault on the right to vote in generations. It's clear: federal oversight is urgently needed." Press Release, *Rep. Sewell Introduces H.R. 4, the John R. Lewis Voting Rights Advancement Act, to Restore Protections of the Voting Rights Act of 1965* (Aug. 17, 2021), <https://sewell.house.gov/media-center/press-releases/rep-sewell-introduces-hr-4-john-r-lewis-voting-rights-advancement-act>.

⁵⁶¹ For the People Act of 2021, H.R. 1, 117th Cong. (2021); see also Jacob Pramuk, *Senate Republicans Block Democrats' Sweeping Voting, Ethics Bill*, CNBC (June 22, 2021, 7:45 PM), <https://www.cnbc.com/2021/06/22/senate-to-vote-on-s1-for-the-people-act-bill.html>.

⁵⁶² H.R. 1.

⁵⁶³ John Lewis Voting Rights Advancement Act of 2021, H.R. 4, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/4/text?q=%7B%22search%22%3A%5B%22hr4%22%5D%7D&r=1&s=1>.

to stave off a Republican filibuster.⁵⁶⁴ If passed, H.R. 4 would provide a critical tool to repair the political harm inflicted on the Black community in Wilmington in 1898 and the decades that followed, which inexcusably continues today.⁵⁶⁵

3. Increasing Economic Opportunity

The White supremacists who ousted the government of Wilmington in 1898 did so, in part, to destroy Black economic prosperity. The most affluent Black citizens were typically banished from the city.⁵⁶⁶ Those who remained frequently were fired so they could be replaced by White men.⁵⁶⁷ Wages fell and unemployment rose.⁵⁶⁸ Even today, racial discrimination limits housing options for Black families.⁵⁶⁹ In many ways, the Black citizens of Wilmington have never economically recovered from 1898 or the institutionalized segregation and discrimination that it enabled.

To repair the damage done in 1898, all levels of government need to increase investment to improve access to economic opportunity and affordable housing in Wilmington. Nonprofits like Genesis Block and the Cape Fear Housing Coalition are doing some of this work, but they do not have the resources to effect the necessary level of change. Increased government investment could, as the Commission proposed in 2006, come in the form of a Restructuring and Development Authority, which could administer the funds and target them to areas with the greatest need.⁵⁷⁰ If no governmental entity is willing to establish and administer a Restructuring and Development Authority, then the government should support the existing nonprofits that further this mission.

To increase affordable housing in the region, the Cape Fear Housing Authority has recommended that the State of North Carolina pour

⁵⁶⁴ Juana Summers, *The House Has Passed a Bill to Restore the Voting Rights Act*, NPR (Aug. 24, 2021), <https://www.npr.org/2021/08/24/1030746011/house-passes-john-lewis-voting-rights-act> (noting that H.R. 4 “faces steep GOP opposition in the evenly divided Senate.”).

⁵⁶⁵ President Biden has characterized the fight to preserve voting rights as a “test of our time” and called upon Republicans to join Democrats to “help prevent this concerted effort to undermine our election and the sacred right to vote.” Bryan Nalor & Alana Wise, ‘*This Is a Test of Our Time*,’ *Biden Says About Voting Rights Battles*, NPR (July 13, 2021), <https://www.npr.org/2021/07/13/1015621049/texas-democrats-biden-voting-rights>.

⁵⁶⁶ See Tyson, *supra* note 45, at 1.

⁵⁶⁷ ZUCCHINO, *supra* note 31, at 276.

⁵⁶⁸ UMFLEET, *supra* note 15, at 144, 149.

⁵⁶⁹ See *supra* notes 436–37 and accompanying text.

⁵⁷⁰ WILMINGTON REPORT, *supra* note 46, at 7–8.

additional resources into its Housing Trust Fund (the “Fund”).⁵⁷¹ The Fund “has a strong record of accomplishment of revitalizing distressed areas” and “fills gaps in housing needs statewide,” according to the State.⁵⁷² According to one study, for every million dollars that it spends, the Fund assists 108 households, generates \$5,169,000 in real estate value (for affordable housing); supports 110 jobs, and generates \$455,000 in state and local revenue.⁵⁷³ However, despite the Fund’s success and the rising need for affordable housing in Wilmington (and throughout the state), state contributions to the Trust Fund have sharply declined since 2006. For fiscal year 2007, the Fund received around \$22 million from the state.⁵⁷⁴ Ten years later, funding had dropped to about 7.7 million.⁵⁷⁵ A bill was proposed in the State Senate in 2005 to set the Fund’s annual budget at \$50 million, but it never passed.⁵⁷⁶ Providing affordable housing is critical both to spur economic development and to reduce homelessness. The State of North Carolina should significantly increase its investment in affordable housing, especially in Wilmington. Doing so would constitute a form of community-directed or rehabilitative reparation for Wilmington.⁵⁷⁷

In addition, direct housing grants could be made to those living in Wilmington neighborhoods most directly impacted by the coup, as a form of compensatory or victim-directed reparation. The City of Evanston, Illinois, has recently implemented such a program.⁵⁷⁸ Evanston’s program aims to repair the harms to Black Evanston residents caused by discriminatory housing policies and practices in the city during the period

⁵⁷¹ *North Carolina Housing Trust Fund*, N.C. HOUS. COALITION, <https://nchousing.org/policy-advocacy/north-carolina-housing-trust-fund/> (last visited Aug. 3, 2021) [hereinafter *Housing Trust Fund*]; CAPE FEAR HOUS. COALITION, <http://www.capefearhousingcoalition.org/home.aspx> (last visited Aug. 3, 2021).

⁵⁷² *North Carolina Housing Trust Fund: 30 Years of Results!*, NORTH CAROLINA HOUS. FIN. AGENCY, https://www.nchfa.com/sites/default/files/page_attachments/NCHFA-TRUST_8.5x11in.pdf (last visited Aug. 3, 2021).

⁵⁷³ See *supra* note 571 and accompanying text.

⁵⁷⁴ *Housing Trust Fund*, *supra* note 571.

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ See *supra* note 382 and accompanying text (distinguishing between rehabilitative and compensatory reparations).

⁵⁷⁸ See Marlene Lenthag, *Chicago Suburb of Evanston Approves Reparations Housing Program for Black Residents*, ABC NEWS (Mar. 23, 2021), <https://abcnews.go.com/US/chicago-suburb-evanston-approves-reparations-housing-program-black/story?id=76628587>; City of Evanston, *Evanston Local Reparations* (visited Sept. 26, 2021), <https://www.cityofevanston.org/government/city-council/reparations>.

1919-1969.⁵⁷⁹ Evanston's Restorative Housing Program supports Black home ownership in the city by providing funds to eligible recipients for 1) down payments and closing costs for real property, 2) home improvement, and 3) mortgage assistance.⁵⁸⁰ A similar program could be instituted in Wilmington.

Concrete steps need to be taken to improve economic conditions for the Black communities that were devastated by the Coup of 1898. The poverty that is so prevalent in Wilmington today traces its roots to 1898 and the system of legalized segregation that it produced. The government needs to repair the damage that it inflicted in 1898 on this community.

4. Teaching the Truth about 1898 and Improving Access to Education

Acknowledging the harm inflicted on the Black community in 1898—and educating the people of Wilmington and the State of North Carolina regarding the hard truth of their own history—is a key and required step in the path towards restorative justice. The work of the Commission and its Report have vastly improved the state's progress towards this goal. However, acknowledging what happened, even in a detailed and widely distributed report, is insufficient. For decades, the State of North Carolina taught its citizens a false history of the coup d'état and ethnic cleansing that occurred in Wilmington in 1898.⁵⁸¹ White supremacy talking points were presented to school children as facts.⁵⁸² In later years, the coup was effectively erased from public memory.⁵⁸³ To rectify this injustice, the state needs to do what the Commission recommended back in 2006 and incorporate a robust 1898 curriculum into

⁵⁷⁹ *Evanston Local Reparations*, CITY OF EVANSTON, <https://www.cityofevanston.org/government/city-council/reparations> (last visited Oct. 14, 2021).

⁵⁸⁰ *Id.* Eligible recipients are divided into three categories: ancestors (Black people who lived in the city from 1919-1969), descendants (children or grandchildren of Black people who lived in the city during this time period), and applicants who do not qualify as an ancestor or a descendant, but nevertheless experienced housing discrimination after 1969. *Id.*

⁵⁸¹ See ZUCCHINO, *supra* note 31, at 333–36.

⁵⁸² See *supra* note 478 and accompanying text.

⁵⁸³ See Hunter Ingram, *Is the Wilmington 1898 Coup Getting Lost in the Classroom?*, STARNEWS ONLINE (Aug. 19, 2020, 11:33 AM), <https://www.starnewsonline.com/story/news/education/2020/08/19/is-wilmington-1898-coup-getting-lost-in-classroom/113350746/>.

its public schools.⁵⁸⁴ Teaching children this truth is not “anti-American” or divisive,⁵⁸⁵ but rather should be considered a patriotic and moral imperative.

On this point, Oklahoma is farther along in its journey towards restorative justice than the state of North Carolina. After its own decades of deliberate neglect, Oklahoma has finally taken steps to improve the teaching of the 1921 Tulsa Race Massacre in public education.⁵⁸⁶ Since 2019, the Tulsa Race Massacre Centennial Commission and Tulsa Public Schools have hosted a national summer institute to assist educators in creating lessons on the 1921 Race Massacre.⁵⁸⁷ Similar steps should be taken in North Carolina, to ensure that children understand 1898 as a key inflection point in the history of the state, and the manner in which it enabled the destruction of civil rights for Black Americans throughout the United States, especially in the South, during the Jim Crow era. Creating and implementing these curricular changes would, of course, require resources, which should be either funded directly by the State or from the endowment discussed above.⁵⁸⁸

Repairing the damage done because of the ethnic cleansing and coup, as well as the system of Jim Crow that it enabled, also requires a continuing focus on educational opportunity. Wilmington’s public schools were heavily segregated (as were all public schools in North Carolina) under the doctrine of “separate but equal” rooted in Jim Crow and sanctioned by the Supreme Court in *Plessy v. Ferguson*,⁵⁸⁹ a policy only slowly and reluctantly reversed in Wilmington years after the Supreme

⁵⁸⁴ See *supra* notes 477–78, 484, and accompanying text.

⁵⁸⁵ See T. Keung Hui, *N.C. House Passes Bill to Limit How Racism is Taught. Democrats Call it “Book Burning.”*, NEWS & OBSERVER (May 12, 2021, 2:47 PM), <https://www.newsobserver.com/news/politics-government/article251334958.html> (noting that school standards requiring students to learn about “inequities, injustice, and discrimination within the American system of government over time” have been critiqued as “un-American” and promoting racial divisiveness). See *supra* notes 491–93 and accompanying text.

⁵⁸⁶ See Nuria Martinez-Keel, *‘A Conspiracy of Silence:’ Tulsa Race Massacre was Absent from Schools for Generations*, OKLAHOMAN (May 26, 2021, 9:36 AM), <https://www.oklahoman.com/story/news/education/2021/05/26/oklahoma-history-Black-wall-street-left-out-public-schools-tulsa-massacre-education/4875340001/> (noting that, as of 2019, the Oklahoma state Education Department partnered with the 1921 Tulsa Race Massacre Centennial Commission and the Oklahoma History Center to develop a curriculum for public schools).

⁵⁸⁷ *Id.*

⁵⁸⁸ See *supra* notes 537–38 and accompanying text.

⁵⁸⁹ 163 U.S. 537, 534–44 (1896).

Court's decision in *Brown v. Board of Education*.⁵⁹⁰ That progress was abandoned when the New Hanover County School Board turned its back on diversity in 2006, shifting its focus to “neighborhood schools.”⁵⁹¹ As a result, in 2021, Black children in Wilmington are concentrated in hyper-segregated, high-poverty, low-achieving schools.⁵⁹²

The Supreme Court held over 70 years ago that “[s]eparate educational facilities are inherently unequal.”⁵⁹³ Segregation impacts the quality of education whether it occurs *de jure* or *de facto*, and currently New Hanover County's schools are hyper-segregated. This needs to change. New Hanover County should re-prioritize racial, ethnic, and socioeconomic diversity in drawing school district boundaries. It should also redouble its efforts to improve offerings and resources at the district's magnet schools, to incentivize parents of all races to send their children to these schools. It has made some progress in this regard, for example, by moving the District's Spanish immersion program from Forest Hills Elementary to Gregory.⁵⁹⁴ Ultimately, however, parental choice alone will likely be insufficient to reintegrate the school district. The school board needs to return to policies that ultimately worked in the past to achieve racially balanced, integrated schools.⁵⁹⁵ If the school board does not take steps to do so, the federal government should step in (as it has in the past) to protect the interests of the Black children of Wilmington.⁵⁹⁶

⁵⁹⁰ 347 U.S. 483 (1954); *See supra* notes 502–505 and accompanying text (discussing the history of school integration in Wilmington and New Hanover County).

⁵⁹¹ *See supra* notes 506–19 and accompanying text.

⁵⁹² *See supra* notes 513–19 and accompanying text.

⁵⁹³ *Brown*, 347 U.S. at 495.

⁵⁹⁴ *Legacy of Segregated Communities*, *supra* note 506, at 5–6; *About Us*, INT'L SCH. AT GREGORY, <https://gregory.nhcs.net/about-us> (last visited Aug. 4, 2021).

⁵⁹⁵ *See* Sydney Hoover, *New Hanover Schools Have been 'Segregated' for 15 Years. Is Reintegration Possible?*, STARNEWS ONLINE (July 2, 2021), <https://www.starnewsonline.com/story/news/2021/07/02/new-hanover-still-segregated-15-years-after-switch-neighborhood-schools/7526590002/>; *see also* Matthew D. Lassiter, *How White Americans' Refusal to Accept Busing has Kept Schools Segregated*, WASH. POST (Apr. 20, 2021), <https://www.washingtonpost.com/outlook/2021/04/20/how-white-americans-refusal-accept-busing-has-kept-schools-segregated/>.

⁵⁹⁶ The integration of schools in New Hanover County was initially undertaken in response to a civil rights action, filed under Title VI of the 1964 Civil Rights Act, against the school district. The complaint alleged that—much like today—the district's student assignment model reinforced residential segregation patterns and had a discriminatory impact on Black children. *See Legacy of Segregated Communities*, *supra* note 506, at 2; *see also* Hoover, *supra* note 595. In response to the complaint, the Office of Civil Rights at the Department of Education ordered the district to develop an assignment model under which no school would have less than 15% or

To improve the experience of children living in the high-poverty communities of Wilmington, the local school board and the state Department of Education also need to follow the Recommendations made in 2006 to provide tutoring and other support services to these children and their families. Alternatively, the government should provide a substantial amount of additional funding to nonprofit organizations such as CISCf, which is already doing this work in the community.⁵⁹⁷ The infrastructure for these services already exists, but additional resources are needed to expand the scope of the work that is being done.

Beyond elementary, middle, and high school, reparative justice for Wilmington should also include scholarships or other forms of financial assistance for higher education. Access to a college education provides children with a pathway out of poverty, especially if they can acquire that education without incurring mountains of student debt.⁵⁹⁸ Governments in in both Rosewood, Florida, and Tulsa, Oklahoma, have created scholarships as a form of reparation to communities impacted by racial violence.⁵⁹⁹ The State of Florida provides scholarships to direct descendants of the victims;⁶⁰⁰ Oklahoma's scholarship program is more widely available to any children living in areas of the city that were directly impacted by racial violence.⁶⁰¹ North Carolina should do both.

Community colleges, particularly Cape Fear Community College in Wilmington, can play a role in improving access to education for the Black community impacted by 1898. Currently, the state of North Carolina is

more than 50% Black students. *Legacy of Segregated Communities*, *supra* note 506, at 2. New Hanover County adhered to the order for several years, until it pivoted to a model focused on "neighborhood schools." *Id.*

⁵⁹⁷ See *supra* notes 493–98 and accompanying text.

⁵⁹⁸ Janice Phillips, *Education is the Key to Escaping a Life of Poverty and Poor Health*, HILL (June 24, 2019, 11:30AM), <https://thehill.com/opinion/healthcare/449974-education-is-the-key-to-escaping-a-life-of-poverty-and-poor-health>; Olivia Giovetti, *How Does Education Affect Poverty? It Can Help End It.*, CONCERN WORLDWIDE US (Aug. 27, 2020), <https://www.concernusa.org/story/how-education-affects-poverty/>; see also Sophie Quinton, *The Disproportionate Burden of Student Loan Debt on Minorities*, ATLANTIC (May 5, 2015), <https://www.theatlantic.com/education/archive/2015/05/the-disproportionate-burden-of-student-loan-debt-on-minorities/392456/>; Josh Mitchell & Andrea Fuller, *The Student-Debt Crisis Hits Hardest at Historically Black Colleges*, WALL STREET J. (Apr. 17, 2019), <https://www.wsj.com/articles/the-student-debt-crisis-hits-hardest-at-historically-black-colleges-11555511327>.

⁵⁹⁹ See *supra* notes 357–359, 374 and accompanying text.

⁶⁰⁰ Glenza, *supra* note 252.

⁶⁰¹ H.B. 1178, 48th Leg., 1st Sess. (Okla. 2001).

waiving tuition for the first two years at any community college in the state, including Cape Fear, if the student can show financial need.⁶⁰² This program should be extended beyond its current expiration date of 2023, at least for students who attended one of the four magnet schools in Wilmington discussed above.⁶⁰³ Connecting free community college tuition with these magnet schools may serve the dual purpose of enhancing the magnet schools' reputations, while providing educational opportunity to many children whose lives have been directly or indirectly impacted by the events of 1898. Moreover, the state should establish more concrete pathways to enable community college students to transfer to the state's university system, including UNC-W, to complete their degrees.⁶⁰⁴ Doing so would reduce cost and improve access to higher education for these students.

Any person who is a direct descendant of a victim or survivor of 1898 should receive a tuition waiver upon admission to any of the universities within the University of North Carolina system. For decades, the university system glorified the leaders of the Wilmington Coup, e.g., Charles Aycock, William Shakespeare Carr, and Josephus Daniels, by placing their names on buildings and holding them up as heroes of the state.⁶⁰⁵ Moreover, many of these public universities—some of them

⁶⁰² See Emily Thomas, *Community Colleges Want to Spread the Word: Longleaf Commitment Grant Will Help Students Reach Their Goals*, EDNC (June 2, 2021), <https://www.ednc.org/2021-06-02-community-colleges-want-to-spread-the-word-longleaf-commitment-grant-will-help-students-reach-their-goals/> (explaining the terms of the grant program, which expires in 2023).

⁶⁰³ See *supra* notes 506–19 and accompanying text.

⁶⁰⁴ California has developed partnerships between community colleges and universities that can serve as a model for this reform. See Larry Gordon, *Easing the Transfer Path in California from Community Colleges to Universities*, EDSOURCE (Mar. 29, 2021), <https://edsources.org/2021/easing-the-transfer-path-in-california-from-community-colleges-to-universities>; *Promise 2.0 for LBCSD Students*, LONG BEACH CITY COLL., <https://www.lbcc.edu/post/promise-2-info> (last visited Aug. 5, 2020); SDSU News Team, *SDSU Launches Innovative Agreement with Local Colleges to Increase Degree Access*, SDSU NEWS CTR. (Feb. 5, 2020), https://newscenter.sdsu.edu/sdsu_newscenter/news_story.aspx?sid=77884.

⁶⁰⁵ See Susan Hudson, *The Men Behind the Names*, WELL (July 17, 2020), <https://www.unc.edu/posts/2020/07/17/names-of-dishonor/> (explaining why Charles Aycock, Julian Shakespeare Carr, and Josephus Daniels, leaders of the Wilmington White supremacist campaign, should have their names removed from dormitories and other campus buildings). The university removed these names from its buildings in 2020. Sara Krueger, *UNC-CH removes names Aycock, Carr and Daniels from campus buildings*, WRAL (July 30, 2020), <https://www.wral.com/unc-ch-removes-names-aycock-carr-and-daniels-from-campus-buildings/19210169/>. The university is in the process of selecting names to replace them.

constructed by enslaved people and all of them supported by North Carolina's taxpayers, of *all* races—refused to educate any Black people until they were forced to do so by the courts and the federal government.⁶⁰⁶ North Carolina's public universities have harmed the same Black communities who were victimized by the Coup of 1898. Waiving tuition payments for the descendants of those who were targeted by the state's White Supremacist Campaign in 1898 constitutes an appropriate, and moderate, form of restitution.

Establishing a scholarship fund for students attending the School of Journalism at UNC would also constitute an appropriate reparation, given the critical role the media played in fomenting the 1898 coup.⁶⁰⁷ This scholarship fund should be endowed by the State but also supported by the Raleigh News and Observer, as the Commission recommended over fifteen years ago.⁶⁰⁸ UNC threw away an additional opportunity to use its School of Journalism as a reparative tool in 2021, when the Board of Trustees snubbed alum Nikole Hannah-Jones, the Pulitzer-Prize winning author of the 1619 Project at the *New York Times*, by refusing to consider her tenure application for months, and then only reluctantly approving it by a divided vote.⁶⁰⁹ As a result, Hannah-Jones will be serving as the

Carolina Housing, *Residence Hall Renaming Process* (accessed Sept. 24, 2021), <https://housing.unc.edu/about-us/residence-hall-re-naming-process/>.

⁶⁰⁶ See John K. (Yonni) Chapman, *Black Freedom and the University of North Carolina, 1793-1960* (2006) (Ph.D. dissertation, University of North Carolina at Chapel Hill), <https://dcr.lib.unc.edu/indexablecontent/uuid:2ad37fba-c082-4e69-9a16-135c73aeedc9>.

⁶⁰⁷ WILMINGTON REPORT, *supra* note 46, at 2. Several options exist to target this type of scholarship fund so that it effectively serves as a reparative tool for Wilmington. Limiting use of the fund to direct descendants of 1898 victims and survivors would most likely narrow the pool of eligible recipients too much. Another option would be to make the scholarship available, like the community college fund discussed above, to students attending high school at one of Wilmington's magnet schools. Alternately, the scholarship could be awarded to any student with a demonstrated interest and history of service in the Black press, regardless of familial or geographic connection to Wilmington.

⁶⁰⁸ *See id.*

⁶⁰⁹ *Nikole Hannah-Jones Issues Statement on Decision to Decline Tenure Offer at University of North Carolina-Chapel Hill and to Accept Knight Chair Appointment at Howard University*, LDF (July 6, 2021), <https://www.naacpldf.org/press-release/nikole-hannah-jones-issues-statement-on-decision-to-decline-tenure-offer-at-university-of-north-carolina-chapel-hill-and-to-accept-knight-chair-appointment-at-howard-university/> (reproducing the text of Ms. Jones's statement). Jones described her disrespectful treatment: "Every Knight Chair at the University of North Carolina at Chapel Hill since the 1980s has entered that position as a full professor with tenure. And yet, the vote on my tenure had to be forced by weeks of protests, scathing letters of reprimand, the threat of legal action and my refusal to start July 1 without it. Even then, the Board of Trustees had to be led to this vote by its youngest member, Lamar Richards, the student

Knight Chair in Race and Investigative Journalism at Howard University rather than UNC.⁶¹⁰ The disrespectful treatment of Hannah-Jones by the Board of Trustees has diminished the university's academic reputation and its ability to recruit and retain minority students and faculty.⁶¹¹ Most distressingly, it has confirmed the continued existence of "oppression, racism, and hatred" within the university.⁶¹²

5. Reforming Criminal Justice

One area untouched by the Report issued in 2006 relates to criminal justice reform in the city of Wilmington and the state of North Carolina. As discussed above, one of the first acts of the White supremacist government installed by the 1898 coup in Wilmington was to fire the city's ten Black police officers.⁶¹³ Their existence, and that of a Black jailer, was particularly enraging to White men, some of whom may have enslaved and thereby exercised complete control over Black people in the not-too-distant past.⁶¹⁴ The idea that the government would invest a Black man with the power to arrest or incarcerate a White one was anathema to them. White men who were members of the police force frequently abused their power over Black citizens during the Reconstruction Era.⁶¹⁵ Moreover, particularly at the time of the coup, the lines drawn between soldiers, police officers, and paramilitary groups like the Red Shirts were indistinct.⁶¹⁶

body president who publicly demanded the special meeting. The board then chose to wait to vote [on her tenure] until the last possible day at the last possible moment." *Id.*

⁶¹⁰ *Id.*

⁶¹¹ See *Special Committee to Report on Structural Racism and Violations of Shared Governance at UNC*, AAUP (Sept. 29, 2021), <https://www.aaup.org/news/special-committee-report-structural-racism-and-violations-shared-governance-unc#.YZ9RoMXMJPY>; Colleen Flaherty, *More Fallout for UNC Chapel Hill*, INSIDE HIGHER ED (June 4, 2021), <https://www.insidehighered.com/news/2021/06/04/hannah-jones-tenure-case-costs-unc-chapel-hill-noted-chemistry-faculty-candidate>.

⁶¹² Lamar Richards, *Chapel Hill Student Body President: It's Past Time for a Genuine Reckoning at UNC*, NC POL'Y WATCH (June 17, 2021), <https://www.ncpolicywatch.com/2021/06/17/chapel-hill-student-body-president-its-past-time-for-a-genuine-reckoning-at-unc/>.

⁶¹³ See *supra* note 215 and accompanying text.

⁶¹⁴ ZUCCHINO, *supra* note 31, at xvii.

⁶¹⁵ CECELSKI & TYSON, *supra* note 49, at 238.

⁶¹⁶ See *supra* Part I.C.

Evidence of racist attitudes in the Wilmington police force persists today.⁶¹⁷ In 2020, three Wilmington police officers were fired when their “brutally offensive” conversations, which had been recorded by happenstance, were made public.⁶¹⁸ One officer apparently hoped to reenact the Massacre of 1898, as he proclaimed himself ready for a “civil war” with Black people in Wilmington: “We are just going to go out and start slaughtering them f--- n ____.”⁶¹⁹ The officer added, “Wipe ‘em off the f--- map. That’ll put ‘em back about four or five generations.”⁶²⁰ This same officer also announced that he planned to buy an assault rifle to prepare for civil war, adding, “I can’t wait. God I can’t wait.”⁶²¹ The other officers also made numerous derogatory and profane references to a Black magistrate judge, a Black woman arrestee, and Black people in general.⁶²² The officers admitted to making the remarks in question but claimed they

⁶¹⁷ The problem of systemic racism in policing is, of course, not limited to Wilmington, North Carolina. The murder of George Floyd on May 25, 2020, by a police officer in Minneapolis, Minnesota, set off a wave of demonstrations throughout the United States and beyond, as millions of people protested police brutality disproportionately inflicted on Black people. *See* Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd’s Murder*, NPR (Apr. 20, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/98777911/court-says-jury-has-reached-verdict-in-derek-chauvins-murder-trial>; Rachel Hatzipanagos et al., *Not Enough Has Happened’: Protesters Reflect on What Has Changed — and What Hasn’t*, WASH. POST (June 17, 2021), <https://www.washingtonpost.com/nation/interactive/2021/george-floyd-protests-blm-impact/>. During these protests and after a heated debate, the City of Wilmington authorized the installation of a donated mural stating, “Black Lives Do Matter. End Racism Now” in downtown Wilmington. Gia Lash, *‘Black Lives Do Matter’ Mural Installed as Wilmington and UNCW Reconcile with Race*, SEAHAWK (Oct. 7, 2020), <https://theseahawk.org/28632/culture/black-lives-do-matter-mural-installed-as-wilmington-and-uncw-reconcile-with-race/#>.

⁶¹⁸ WILMINGTON POLICE DEP’T PRO. STANDARDS, INTERNAL INVESTIGATION REPORT 1 (2020), <https://www.wilmingtonnc.gov/home/showdocument?id=12012> [hereinafter INTERNAL INVESTIGATION REPORT]; *see also* Tim Elfrink, *‘We Are Just Gonna Go Out and Start Slaughtering Them’: Three Cops Fired After Racist Talk of Killing Black Residents*, WASH. POST (June 25, 2020), <https://www.washingtonpost.com/nation/2020/06/25/wilmington-racist-police-recording/1/>; Jason Slotkin, *North Carolina Police Chief Fires Three Officers over Racist Comments Caught on Tape*, NPR (June 25, 2020, 5:11 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/25/883358818/wilmington-n-c-police-fires-three-officers-over-racist-comments-caught-on-tape>.

⁶¹⁹ INTERNAL INVESTIGATION REPORT, *supra* note 618, at 2 (quoting Officer Michael “Kevin” Piner).

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.* at 1–2.

were “venting” due to job stress.⁶²³ All of them denied being racist.⁶²⁴ The man who fired them, Donny Williams, announced their terminations one day after being sworn in as Wilmington’s first Black police chief.⁶²⁵ Community activists deemed the removal of these officers from the police force and the public release of the internal investigation records a “good first step” towards restoring the community’s faith in the police department.⁶²⁶

Chief Daniels, who is a native of Wilmington, announced a change in the “vision, values and mission statement” of the Wilmington Police Department (“WPD”) when he assumed office in 2020.⁶²⁷ The WPD’s motto is now “P.R.O.T.E.C.T.”: “Partnership with the community; Respect and value all citizens; Organizational excellence and accountability; Teamwork approach to problem-solving; Equality and inclusion where all people are treated fairly; Commitment to agency and the community it serves; and Transparency through open and effective communication.”⁶²⁸ Chief Daniels has implemented several reforms, such as “enhancing officer training, revising department procedures, and promoting community engagement.”⁶²⁹

⁶²³ *Id.* at 2.

⁶²⁴ *Id.*

⁶²⁵ Hunter Ingram, *Three North Carolina Police Officers Fired for Racist Comments Calling for ‘Slaughtering’ Black People*, USA TODAY (June 25, 2020, 11:23 AM), <https://www.usatoday.com/story/news/nation/2020/06/25/north-carolina-cops-fired-calling-slaughtering-black-people/3256627001/>.

⁶²⁶ Allison Ballard, *Black Leaders: Firing Wilmington Police Officers ‘A Good First Step,’* STARNEWS ONLINE (June 25, 2020, 2:40 PM), <https://www.starnewsonline.com/story/special/2020/06/25/Black-leaders-firing-wilmington-police-officers-rsquo-a-good-first-stepsquo/113368132/> (quoting Deborah Dicks Maxwell, president of the New Hanover County chapter of the NAACP).

⁶²⁷ Kryss Merryman, *‘There Aren’t Enough People Who Want to Do this Job’: Wilmington Police Discuss Diversity*, STARNEWS ONLINE (June 30, 2021, 6:01 AM), <https://www.starnewsonline.com/story/news/2021/06/30/wilmington-police-department-diversity-equity-inclusion-first-Black-chief-donny-williams/7609378002/>. The WPD had not revised its mission statement since 1996, approximately 25 years earlier. *Id.*

⁶²⁸ *Id.*

⁶²⁹ Emma Dill, *Changes Bring ‘Cultural Reset’ to Wilmington Police: Community to Be Given More of a Voice*, StarNews Online, <https://www.starnewsonline.com/story/news/2020/11/26/wilmington-police-policy-changes-bring-cultural-reset-department/6388898002/> (last updated Nov. 30, 2020, 9:50 AM) [hereinafter Dill, *Changes Bring ‘Cultural Reset’*]. Congress has recently tried but failed to adopt broader police reform legislation at the federal level. See *Federal Police Reform Talks Have Failed – but Local Efforts Stand a Better Chance of Success*, CONVERSATION (Sept. 24, 2021), <https://theconversation.com/federal-police-reform-talks-have-failed-but-local-efforts->

Whether Chief Daniels and the rest of the police department will be able to carry out this mission statement remains to be seen. Improving the diversity of the WPD would help. As of 2019, the racial composition of the WPD was about 78% White, less than 11% Black, and about 9% Hispanic.⁶³⁰ In the same year the population of Wilmington was 18.4% Black,⁶³¹ meaning that Black people were underrepresented on the police force, compared to their presence in the community. Chief Daniels has pledged to “focus on promoting diversity and inclusion” within the WPD,⁶³² but whether that focus will be sufficient to yield a more diverse police force has yet to be determined.

The WPD’s desire for “Transparency” will be hard to achieve, due to a North Carolina state law, enacted in 2016 (a decade after the 1898 Commission released its Report), which is among the most restrictive in the nation regarding the release of police officers’ body cam videos.⁶³³ This law provides that body cam videos are not public records and cannot be released to anyone, including a person filmed in the video, without first obtaining a court order.⁶³⁴ This law has aroused controversy in cases involving fatal police shootings, as in the case of Andrew Brown, Jr. Sheriff’s deputies shot Brown five times, once in the back of the head, as they attempted to serve him with an arrest warrant on felony drug charges.⁶³⁵ After petitioning the court, his family was initially allowed to see only twenty seconds of redacted video from the shooting, about a week after it occurred.⁶³⁶ To date, the full, unedited video still has not been

stand-a-better-chance-of-success-168630; see also Robert Klemko & John Sullivan, *The Push to Remake Policing Takes Decades, only to Begin Again*, WASH. POST (June 10, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/police-reform-failure/>.

⁶³⁰ Merryman, *supra* note 627. In 2019, the WPD had 168 uniformed officers; 18 of them were Black. Michael Praats, *Wilmington Police Department Deputy Chief Talks Recruiting, Racial Representation, and Retaining Officers*, PORTCITYDAILY (Oct. 6, 2019), <https://portcitydaily.com/local-news/2019/10/06/wilmington-police-department-deputy-chief-talks-recruiting-racial-representation-and-retainer-officers/>.

⁶³¹ Merryman, *supra* note 627.

⁶³² Dill, *Changes Bring ‘Cultural Reset’*, *supra* note 629.

⁶³³ *More States Set Privacy Restrictions on Bodycam Video*, REPS. COMM. FOR FREEDOM PRESS (June 29, 2016), <https://www.rcfp.org/more-states-set-privacy-restrictions-bodycam-video/>.

⁶³⁴ N.C. GEN. STAT. § 132-1.4A (2020).

⁶³⁵ Adeel Hassan, *What We Know About the Killing of Andrew Brown Jr. in North Carolina*, N.Y. TIMES, <https://www.nytimes.com/2021/04/28/us/andrew-brown-jr-shooting-north-carolina.html> (last updated May 18, 2021).

⁶³⁶ Sarah McCammon, *Family Permitted to See 20 Seconds of Bodycam Video from Shooting of Andrew Brown Jr.*, NPR (Apr. 26, 2021, 4:12 PM),

released, either to Brown's family or the public.⁶³⁷ This lack of transparency erodes trust between law enforcement and the communities it is supposed to protect.⁶³⁸ State Sen. Mujtaba Mohammed has proposed a bill that would require law enforcement to release these types of law enforcement videos within forty-eight hours of receiving a request.⁶³⁹ The bill shifts the burden to law enforcement to seek a court order prohibiting the release of such videos, if can show good cause to do so.⁶⁴⁰

Candor constitutes the first step in achieving restorative justice, to repair damaged relationships.⁶⁴¹ For reasons both historical and modern, the relationship between law enforcement and the Black community in Wilmington (and throughout the state of North Carolina) is damaged and needs repair. Sen. Mohammed's proposed bill would build greater trust between law enforcement and the Black community by increasing transparency. It should be enacted. The body-cam law enacted in 2016, which has the opposite effect, was a step in the wrong direction. The Wilmington Police Department and the New Hanover County Sheriff's Department should also take further steps to engage with the communities that they serve. Healing the divide between law enforcement and communities of color, as with all exercises of restorative justice, will require hard and serious work, but it must be done.

<https://www.npr.org/2021/04/26/990980182/family-permitted-to-see-20-seconds-of-bodycam-video-from-shooting-of-andrew-brow>.

⁶³⁷ Brian Farrell, *Hearing to Consider Releasing Additional Footage of Andrew Brown Jr. Shooting in Elizabeth City Delayed*, 13NEWSNOW, <https://www.13newsnow.com/article/news/local/north-carolina/hearing-andrew-brown-jr-shooting-video/291-973bafc7-ecf7-4db3-a7c7-0293f6af95e4> (last updated July 16, 2021, 5:45 PM).

⁶³⁸ Tanya Mendis & Hunter Saenz, *NC Law Requires Court Order to Release Bodycam Footage. Lawmakers are Hoping to Change that.*, WCNC CHARLOTTE, <https://www.wcnc.com/article/news/investigations/north-carolina-law-bodycam-footage-released/275-9abe415f-b281-49c7-834e-4b41a07fda94> (last updated Apr. 27, 2021, 11:36 PM) (quoting Kristie Puckett Williams of the ACLU).

⁶³⁹ See An Act to Require the Release of Body-Worn and Dashboard Camera Recordings upon Request After Forty-Eight Hours Have Passed from the Time of the Recording, S.B. DRS15520-ND-69, 2021 Sess. (N.C. 2021).

⁶⁴⁰ *Id.*

⁶⁴¹ See *supra* notes 330–31 and accompanying text.

6. Establishing a Commission to Study the Impact of Slavery, Jim Crow, and Racial Discrimination in North Carolina

The final recommendation for reparative justice in Wilmington echoes one made by the 1898 Commission in 2006: The State of North Carolina should establish a new commission to study the broader impact of “slavery, Jim Crow, and discrimination” on the state’s Black population.⁶⁴² Moreover, the state should commit to follow through with the findings and recommendations made by such a commission, so they do not lie dormant and forgotten. As demonstrated throughout this article, the victims of the ethnic cleansing and coup perpetrated in Wilmington suffered concrete injuries in 1898 that, even today, reverberate throughout their families and their community. However, the consequences of the coup are in many respects inseparable from the pervasive effects of the institution of African chattel slavery that preceded it, and the Jim Crow system of legal apartheid that came after it. The State of North Carolina and the nation as a whole need to study and address these human rights abuses, and commit to repair them, as the need for restorative justice extends far beyond the boundaries of Wilmington.

Wilmington was, in many ways, an opening act in a larger tragedy that is still playing out today. If the state or the federal government had intervened to prevent the overthrow of a democratically elected government in 1898, and blocked attempts to steal elections by blatant voter fraud and violent voter intimidation, Jim Crow never would have taken hold in North Carolina and potentially throughout the South. Every institution—from state and local governments to the United States Supreme Court—failed to protect United States citizens who were recently freed from the bonds of slavery. If the formerly enslaved had been White, these governmental institutions would not and could not have enabled this travesty of justice. The country’s pervasive belief in White supremacy, its roots embedded in slavery, ultimately trumped its commitment to democracy.

⁶⁴² WILMINGTON REPORT, *supra* note 46, at 1. See also Kimberly Cook, *Wilmington Needs Truth/Reconciliation Process to Address Legacy of Racism*, STARNEWS ONLINE (July 1, 2019), <https://www.starnewsonline.com/opinion/20190701/opinion-wilmington-needs-truthreconciliation-process-to-address-legacy-of-racism> (advocating the creation and funding of a “truth and reconciliation program to better understand and address the historical harms of racism” in Wilmington).

V. CONCLUSION

Over a hundred years have passed since White North Carolinians committed atrocities against their Black neighbors in Wilmington, but the passage of time has not, and will not, heal the wounds that were inflicted on that day. Ta-Nehisi Coates, writing in regard to slavery, observes, “[S]till we are haunted. It is as though we have run up a credit-card bill and, having pledged to charge no more, remain befuddled that the balance does not disappear. The effects of that balance, interest accruing daily, are all around us.”⁶⁴³

The need for restorative justice in Wilmington is acute. For all the reasons discussed, the failure to take sufficient steps towards healing—including the payment of individual and community-wide reparations—has had disastrous results. Black voting rights in the state are, once again, under attack. White parents do not want their children to attend school with Black children, so New Hanover County’s public schools are segregated (again). White police officers in the Wilmington Police Department—who steadfastly contend that they are “not racist”—casually use racial slurs to refer to Black citizens, and at least one eagerly anticipates “slaughtering” Black people with an assault rifle in an upcoming “civil war.”⁶⁴⁴ The list goes on. These regressions would not likely happen in a society that had fully acknowledged the scope of its former atrocities and taken concrete steps to repent and repair the damage it has done.

Going forward, Wilmington must come to terms with its past if it wishes to embrace a better future. It started the process under the leadership of the Wilmington Race Riot Commission in 1998, but too many of that Commission’s recommendations have languished on the vine in the years since. To achieve the reconciliation that is the goal of restorative justice, both sides must “come to the table” and do the hard work that is required to rebuild relationships and restore communities. Some of this work focuses on the individual (e.g., payment of reparations to survivors); other strategies may be political (such as voting or lobbying for redistricting reform). But the victims cannot receive justice by repairing themselves. The harm was inflicted—not by one or two individual people—but by a society, and therefore the society has an obligation to repair it.

⁶⁴³ Coates, *supra* note 335.

⁶⁴⁴ See *supra* notes 617–622 and accompanying text.